

APPROPRIATIONS

CHAPTER 1

HOUSE BILL NO. 1001
(Committee on Appropriations)

ELECTED OFFICIALS

AN ACT making an appropriation for defraying the expenses of various elected officials of the state of North Dakota and the livestock sanitary board; to create and enact a new section to chapter 34-06 of the North Dakota Century Code, relating to the application of wage and hour standards to persons providing companionship services and family home care; to amend and reenact sections 4-01-21, 26.1-01-09, 34-05-01.2, 49-01-05, 54-07-04, 54-08-03, 54-09-05, 54-10-10, 54-11-13, 54-12-11, and 57-01-04 of the North Dakota Century Code, relating to the salaries of the commissioner of agriculture, commissioner of insurance, commissioner of labor, public service commissioners, governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, and tax commissioner; to provide for transfers; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income the sums as hereinafter provided to the various elected officials and the livestock sanitary board for the purpose of defraying the expenses of the various elected officials of the state of North Dakota and the livestock sanitary board, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.

GOVERNOR'S OFFICE

Salaries and wages	\$ 1,278,374
Operating expenses	440,828
Equipment	4,250
Grants, benefits, and claims	577,625
Governor's office contingency	5,720
Child abuse program	200,000
Protection and advocacy project	1,945,270
Employment incentives	40,000
Roughrider awards	2,400
Total all funds	\$ 4,494,467
Less estimated income	1,704,310
Total general fund appropriation	\$ 2,790,157

Subdivision 2.

LIEUTENANT GOVERNOR

Salaries and wages	\$ 231,428
Operating expenses	8,000

Lieutenant governor contingency	6,893
Total general fund appropriation	\$ 246,321

Subdivision 3.

SECRETARY OF STATE

Salaries and wages	\$ 1,076,983
Data processing	258,845
Operating expenses	200,243
Equipment	34,311
Petition review	4,800
Total general fund appropriation	\$ 1,575,182

Subdivision 4.

SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	\$ 284,512
Total general fund appropriation	\$ 284,512

Subdivision 5.

ATTORNEY GENERAL

Salaries and wages	\$ 8,683,770
Data processing	388,141
Operating expenses	1,821,683
Controlled substances board	4,000
Equipment	210,759
Arrest and return of fugitives	14,560
Grants, benefits, and claims	1,565,000
Court monitor	253,000
ARC legal fees	45,000
State employee defense	250,000
Litigation fees	80,381
Total all funds	\$13,316,294
Less estimated income	5,199,754
Total general fund appropriation	\$ 8,116,540

Subdivision 6.

STATE AUDITOR

Salaries and wages	\$ 3,426,705
Data processing	30,250
Operating expenses	456,261
Equipment	21,640
Total all funds	\$ 3,934,856
Less estimated income	461,111
Total general fund appropriation	\$ 3,473,745

Subdivision 7.

STATE TREASURER

Salaries and wages	\$ 511,508
Data processing	18,681
Operating expenses	70,061
Equipment	1,863
Total all funds	\$ 602,113
Less estimated income	5,000
Total general fund appropriation	\$ 597,113

Subdivision 8.

STATE TAX COMMISSIONER

Salaries and wages	\$ 9,157,200
--------------------	--------------

Data processing	1,295,714
Operating expenses	1,968,962
Equipment	21,750
City sales administrative funds	400,000
Total all funds	<u>\$12,843,626</u>
Less estimated income	421,500
Total general fund appropriation	<u>\$12,422,126</u>

Subdivision 9.

LABOR COMMISSIONER

Salaries and wages	\$ 521,631
Operating expenses	83,864
Equipment	3,863
Total all funds	<u>\$ 609,358</u>
Less estimated income	105,987
Total general fund appropriation	<u>\$ 503,371</u>

Subdivision 10.

PUBLIC SERVICE COMMISSION

Salaries and wages	\$ 4,218,465
Data processing	214,421
Operating expenses	4,037,866
Equipment	63,125
Total all funds	<u>\$ 8,533,877</u>
Less estimated income	4,858,179
Total general fund appropriation	<u>\$ 3,675,698</u>

Subdivision 11.

AGRICULTURE COMMISSIONER

Salaries and wages	\$ 1,994,967
Data processing	38,820
Operating expenses	1,385,799
Equipment	11,496
Agriculture in the classroom	25,000
Waterbank program	50,000
Leafcutter bees	2,000
Leafy spurge control	540,000
Agriculture mediation services	800,000
Farm credit counseling	700,000
Total all funds	<u>\$ 5,548,082</u>
Less estimated income	1,932,479
Total general fund appropriation	<u>\$ 3,615,603</u>

Subdivision 12.

INSURANCE COMMISSIONER

Salaries and wages	\$ 2,264,965
Data processing	968
Operating expenses	542,570
Equipment	13,609
Total appropriation from the insurance regulatory trust fund	<u>\$ 2,822,112</u>

Subdivision 13.

LIVESTOCK SANITARY BOARD

Salaries and wages	\$ 353,235
Operating expenses	167,858
Equipment	<u>900</u>

Total general fund appropriation	\$ 521,993
Grand total general fund appropriation H.B. 1001	\$37,867,599
Grand total special funds appropriation H.B. 1001	\$17,766,782
Grand total all funds H.B. 1001	\$55,634,381

SECTION 2. APPROPRIATION - AUTHORIZATION - GOVERNOR'S OFFICE. The governor's office is hereby authorized to receive and expend any federal or private funds which are hereby appropriated that become available during the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 3. APPROPRIATION - TRANSFER - ATTORNEY GENERAL. There is hereby authorized, as included in the appropriation for the attorney general in subdivision 5 of section 1 of this Act, a transfer of \$577,681, or so much thereof as may be necessary, from the state bonding fund for the purpose of defraying the expenses related to the state fire marshal program including the hazardous material control officer. Such funds shall be transferred by the office of management and budget only at such times as the moneys are required for disbursement by the attorney general.

SECTION 4. INCOME AUTHORIZATION - TAX COMMISSIONER. Notwithstanding section 57-01-02.1 or any other provision to the contrary, income of up to \$400,000 received from administrative fees generated through tax collection agreements with counties or other political subdivisions initiating taxes during the biennium ending June 30, 1991, will be deposited in the tax commissioner's operating fund. All fees collected over \$400,000 will be deposited in the general fund. Funds under this section are hereby appropriated for purposes of this section and are included in subdivision 8 of section 1 of this Act.

SECTION 5. TRANSFER - GENERAL FUND. There is hereby transferred to the general fund in the state treasury, out of motor vehicle fuel taxes revenue, collected pursuant to section 57-43.1-02, the sum of \$959,268 for the purpose of reimbursing the general fund for expenses incurred in the collection of the motor vehicle fuels and special fuels taxes and the administration of the respective tax acts.

SECTION 6. TRANSFER - DEPARTMENT OF AGRICULTURE. The amount of \$700,000, or so much thereof as may be necessary, included in the estimated income line item in subdivision 11 of section 1 of this Act, is hereby appropriated and shall be transferred to the department of agriculture from the home quarter fund in quarterly installments of \$87,500, or so much thereof as is determined by the commissioner of agriculture to be necessary for the purpose of providing farm credit counseling and negotiation services for the biennium beginning July 1, 1989, and ending June 30, 1991. Transfers in excess of \$87,500 per quarter, not to exceed the total of \$700,000, may be authorized by the credit review board.

SECTION 7. TRANSFER - ATTORNEY GENERAL APPROPRIATION. There is hereby appropriated and authorized the transfer of \$36,000 from the assets forfeiture fund to the attorney general as included in estimated income in subdivision 5 of section 1 of this Act.

SECTION 8. APPROPRIATION - TRANSFER FROM STATE BONDING FUND. There is hereby appropriated as included in subdivision 12 of section 1 of this Act and authorized the transfer to the insurance regulatory trust fund in the state treasury, the sum of \$53,694, or so much thereof as may be necessary,

from the state bonding fund to pay bonding fund administrative expenses for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 9. APPROPRIATION - TRANSFER FROM STATE FIRE AND TORNADO FUND.

There is hereby appropriated as included in subdivision 12 of section 1 of this Act and authorized the transfer to the insurance regulatory trust fund in the state treasury, the sum of \$331,988, or so much thereof as may be necessary, from the state fire and tornado fund to pay fire and tornado administrative expenses for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 10. APPROPRIATION - TRANSFER FROM UNSATISFIED JUDGMENT FUND.

There is hereby appropriated as included in subdivision 12 of section 1 of this Act and authorized the transfer to the insurance regulatory trust fund in the state treasury, the sum of \$69,781, or so much thereof as may be necessary, from the state unsatisfied judgment fund to pay unsatisfied judgment administrative expenses for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 11. TRANSFER - ATTORNEY GENERAL. There is hereby transferred up to \$250,000, or so much thereof as may be necessary, from the state bonding fund to the attorney general for the purpose of providing state employee defense services pursuant to section 26.1-21-10.2. The emergency commission, notwithstanding section 54-16-04, is authorized during the biennium beginning July 1, 1989, and ending June 30, 1991, to approve the transfer of the funds from the state bonding fund appropriated in subdivision 5 of section 1 of this Act to the extent necessary and based upon applications by the attorney general. Funds appropriated and transferred to the attorney general for state employee defense must be reimbursed to the state bonding fund through deficiency appropriation and the attorney general shall report to the budget section of the legislative council the amount of any deficiency appropriation that may be introduced to the fifty-second legislative assembly.

SECTION 12. TRANSFER. There is hereby authorized the transfer to the general fund in the state treasury, the sum of \$5,000,000 from the state bonding fund. Such moneys shall be transferred during the biennium beginning July 1, 1989, and ending June 30, 1991, as directed by the office of management and budget.

SECTION 13. TRANSFER. The balance remaining in the secretary of state's department fund at the close of the 1987-89 biennium is hereby authorized for transfer to the general fund in the state treasury. Such moneys shall be transferred during the biennium beginning July 1, 1989, and ending June 30, 1991, as directed by the office of management and budget.

SECTION 14. APPROPRIATION - PUBLIC SERVICE COMMISSION. Notwithstanding any other provisions of law, after July 1, 1989, up to \$25,513 in funds generated by the public service commission due to oil and gas meter monitoring responsibilities is hereby appropriated for the period beginning July 1, 1989, and ending June 30, 1991, as included in subdivision 10 of section 1 of this Act. Any amounts in excess of \$25,513 shall be deposited in the general fund.

SECTION 15. APPROPRIATION - ATTORNEY GENERAL. Notwithstanding any other provisions of law, up to \$3,000 in revenues collected from fees charged for gaming law and administrative rules manuals published by the attorney

general is hereby appropriated for the period beginning July 1, 1989, and ending June 30, 1991, as included in subdivision 5 of section 1 of this Act.

SECTION 16. A new section to chapter 34-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exemption for companionship services and family home care.

1. Employees who provide companionship services for individuals who, because of age or disability, are unable to care for themselves are exempt from any minimum wage and hour standards that may be prescribed under this chapter, to the extent that those companionship services are provided by an employee from ten p.m. to nine a.m., up to a total of eight hours, during which time the employee is available to perform duties for the aged or disabled individual, but is free to sleep and otherwise engage in normal private pursuits in the aged or disabled individual's home. Employees who provide companionship services are not entitled to any overtime premium that may be prescribed under this chapter.
2. An individual who provides family home care is exempt from any minimum wage and hour standards that may be prescribed under this chapter.
3. An individual who contracts with an elderly or disabled person, or a spouse or relative of an elderly or disabled person as described in subdivision b of subsection 4, to provide room, board, supervisory care, and personal services to that elderly or disabled person is exempt from any minimum wage and hour standards that may be prescribed under this chapter.
4. As used in this section:
 - a. "Companionship services" means those services that provide fellowship, care, and protection for individuals who, because of advanced age or physical or mental disabilities, cannot care for their own needs. Those services may include household work related to the care of the aged or disabled person, including meal preparation, bed making, washing of clothes, and other similar services, and may include the performance of general household work if that work does not exceed twenty percent of the total weekly hours worked. "Companionship services" do not include services relating to the care and protection of the aged or disabled which require and are performed by trained personnel, including a registered or practical nurse, and do not include individuals who provide care and protection for infants and young children who are not physically or mentally disabled.
 - b. "Family home care" means the provision of room, board, supervisory care, and personal services to an eligible elderly or disabled person by the spouse or by one of the following relatives, or the current or former spouse of one of the following relatives, of the elderly or disabled person: parent, grandparent, adult child, adult sibling, adult grandchild, adult niece, or adult nephew.

SECTION 17. AMENDMENT. Section 4-01-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-01-21. Salary of commissioner of agriculture. The annual salary of the commissioner of agriculture is ~~forty-six~~ forty-nine thousand three hundred dollars.

SECTION 18. AMENDMENT. Section 26.1-01-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-01-09. Salary of commissioner. The annual salary of the commissioner is ~~forty-six~~ forty-nine thousand three hundred dollars.

SECTION 19. AMENDMENT. Section 34-05-01.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

34-05-01.2. Department of labor to be administered by commissioner of labor. The department of labor must be administered by a commissioner of labor who must be elected for a four-year term on a no-party ballot in the year 1966 and every four years thereafter in the same manner as provided for no-party candidates pursuant to title 16.1. Following his election, the term of the commissioner of labor commences on the same day as the terms for other elected state officials. The commissioner of labor shall possess the same qualifications for office as the commissioner of agriculture. The annual salary of the commissioner of labor is ~~forty-six~~ forty-nine thousand three hundred dollars.

SECTION 20. AMENDMENT. Section 49-01-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-01-05. Salary of commissioners. The annual salary of a commissioner is ~~forty-six~~ forty-nine thousand three hundred dollars. All fees received or charged by any such commissioner for any act or service rendered in any official capacity, shall be accounted for and paid over by him monthly to the state treasurer and shall be credited to the general fund of the state.

SECTION 21. AMENDMENT. Section 54-07-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-07-04. Salary of governor. The annual salary of the governor is ~~sixty~~ sixty-five thousand eight two hundred ~~sixty-two~~ dollars.

SECTION 22. AMENDMENT. Section 54-08-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-08-03. Salary of lieutenant governor. The annual salary of the lieutenant governor is ~~fifty~~ up to fifty-three thousand five hundred dollars.

SECTION 23. AMENDMENT. Section 54-09-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-09-05. Salary of secretary of state. The annual salary of the secretary of state is ~~forty-six~~ forty-nine thousand three hundred dollars.

SECTION 24. AMENDMENT. Section 54-10-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-10-10. Salary of state auditor. The annual salary of the state auditor is ~~forty-six~~ forty-nine thousand three hundred dollars.

SECTION 25. AMENDMENT. Section 54-11-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-11-13. Salary of state treasurer. The annual salary of the state treasurer is ~~forty-six~~ forty-nine thousand three hundred dollars.

SECTION 26. AMENDMENT. Section 54-12-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-12-11. Salary of attorney general. The annual salary of the attorney general is ~~fifty-two~~ fifty-five thousand seven hundred dollars.

SECTION 27. AMENDMENT. Section 57-01-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-01-04. Salary. The annual salary of the state tax commissioner is ~~forty-six~~ forty-nine thousand three hundred dollars.

SECTION 28. APPROPRIATION - TRANSFER - TAX DEPARTMENT. There is hereby authorized, as included in the appropriation for the state tax commissioner in subdivision 8 of section 1 of this Act, a transfer of \$21,500, or so much as may be necessary, from the centennial tree program trust fund to defray the expense of administering the centennial tree program trust fund income tax contribution.

SECTION 29. CONTINGENT APPROPRIATION - AGRICULTURE COMMISSIONER. There is hereby appropriated the sum of \$45,238, or so much thereof as may be necessary, from the general fund in the state treasury, and \$256,350 in federal funds, or so much thereof as may be necessary, to the agriculture commissioner for the biennium beginning July 1, 1989, and ending June 30, 1991. The \$45,238 general fund appropriation is contingent upon the ability to match additional federal environmental protection agency funds.

SECTION 30. INCOME AUTHORIZATION - STATE TREASURER. The state treasurer is authorized, as included in the appropriation for the state treasurer in subdivision 7 of section 1 of this Act, to administer the sale of alcohol beverage decals for liquor and beer destined for delivery to a federal enclave in North Dakota for domestic consumption and not transported through a licensed North Dakota wholesaler.

SECTION 31. LEGISLATIVE COUNCIL STUDY. The legislative council shall study the budgetary impact on the state and counties, and the fiscal effect on providers, of providing companionship services, family home care, and personal care services, and the feasibility and desirability of providing exemptions from minimum wage and hour standards that may be prescribed under chapter 34-06 for persons who provide companionship services, family home care, and personal care services. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-second legislative assembly.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 2

HOUSE BILL NO. 1002
(Committee on Appropriations)

SUPERINTENDENT OF PUBLIC INSTRUCTION

AN ACT to provide an appropriation for defraying the expenses of the superintendent of public instruction and the state board of vocational education of the state of North Dakota; to provide for a transfer of funds from the displaced homemaker fund and state school construction fund; to create and enact two new sections to chapter 15-21, a new section to chapter 15-27.4, and two new sections to chapter 15-65 of the North Dakota Century Code, relating to a revolving school district equipment and software fund, adult basic and secondary education, tax credits for unobligated cash balances of dissolved school districts, and school district telecommunications grants; to amend and reenact section 15-21-02, the new section to chapter 15-34.1 of the North Dakota Century Code as created by section 6 of House Bill No. 1421, as approved by the fifty-first legislative assembly, and sections 15-60-03, 15-60-06, 15-60-07, subdivision j of subsection 1 of section 57-15-14.2, and subsection 1 of section 57-15-17.1 of the North Dakota Century Code, relating to the salary of the superintendent of public instruction, foundation aid payments to school districts for supervising home-based instruction, the transformation of the state school construction fund into an interest buydown fund, and asbestos abatement; to repeal sections 15-60-04, 15-60-05, and 15-60-09 of the North Dakota Century Code, relating to construction contracts with the board of public school education and the power of the board to acquire land; to provide two sections of legislative intent regarding special education and vocational education postsecondary grants; and to provide for a legislative council study of education finance issues.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the superintendent of public instruction and the state board of vocational education of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1. SUPERINTENDENT OF PUBLIC INSTRUCTION	
Salaries and wages	\$ 7,166,120
Data processing	366,889
Operating expenses	3,709,189
Equipment	603,342
Grants - foundation aid	374,198,588
Grants - tuition apportionment	48,200,000

Grants - special education	38,145,476
Grants - other grants	71,567,328
Total all funds	<u>\$543,956,932</u>
Less estimated income	133,258,875
Total general fund appropriation	<u>\$410,698,057</u>

Subdivision 2.

BOARD OF VOCATIONAL EDUCATION

Salaries and wages	\$ 2,098,171
Data processing	10,000
Operating expenses	416,595
Equipment	7,300
Grants - vocational, postsecondary	4,405,132
Grants - vocational, other	15,683,434
Advisory council - vocational education	290,000
Total all funds	<u>\$ 22,910,632</u>
Less estimated income	9,245,805
Total general fund appropriation	<u>\$ 13,664,827</u>
Grand total general fund appropriation HB 1002	\$424,362,884
Grand total special funds appropriation HB 1002	\$142,504,680
Grand total all funds HB 1002	<u>\$566,867,564</u>

SECTION 2. INTENT. It is the intent of the legislative assembly that the sum of \$48,200,000, or such greater or lesser sums as become available, included in the grants - tuition apportionment and estimated income line items in section 1 of this Act, be distributed by the office of management and budget out of any moneys in the state tuition fund in the state treasury to the public schools of this state as provided in section 2 of article IX of the Constitution of North Dakota and chapter 15-44 for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 3. APPROPRIATION - TRANSFER. The amount of \$262,500, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act is hereby appropriated and shall be transferred from the displaced homemaker fund to the superintendent of public instruction for the purpose of providing services for displaced homemakers as provided in chapter 14-06.1 for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 4. APPROPRIATION - TRANSFER. The amount of \$1,160,492, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act is hereby appropriated and shall be transferred from the state school construction fund to the superintendent of public instruction for the biennium beginning July 1, 1989, and ending June 30, 1991. Of the \$1,160,492 total amount transferred, \$10,492 shall be used to administer the state school construction fund, \$350,000 shall be used by the superintendent of public instruction for transitional telecommunications projects, \$250,000 shall be used to contract for public and educational broadcasting services, \$400,000 shall be used as matching funds for purchasing a public television transmitter to serve south central North Dakota, and \$150,000 and any amount not spent on transitional projects shall be used for administration and grants pursuant to section 14 of this Act.

SECTION 5. ADDITIONAL INCOME. The superintendent of public instruction may seek additional income for support of the teacher center network and to establish programs to provide instructional courses by electronic media for the biennium beginning July 1, 1989, and ending June 30,

1991. Income received for these projects can be expended by authorization of the emergency commission.

SECTION 6. TRANSFER. There is hereby authorized the transfer to the general fund in the state treasury, the sum of \$5,500,000 from the state school construction fund. Such moneys shall be transferred during the biennium beginning July 1, 1989, and ending June 30, 1991, at the direction of the office of management and budget.

SECTION 7. AMENDMENT. Section 15-21-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-21-02. Salary and traveling expenses. The annual salary of the superintendent of public instruction is ~~forty-seven~~ fifty thousand three hundred dollars. ~~He shall be allowed in addition thereto his~~ The superintendent is also entitled to reimbursement for expenses incurred in the discharge of his official duties, such expenses to be paid monthly on a warrant prepared by the office of management and budget and signed by the state auditor, upon the filing of an itemized and verified statement of expenses.

SECTION 8. Two new sections to chapter 15-21 of the North Dakota Century Code are hereby created and enacted to read as follows:

Definitions - Adult and adult basic and secondary education.

1. "Adult", for purposes of providing adult basic and secondary education programs, means any person who is beyond the age of compulsory school attendance required by section 15-34.1-01.

2. "Adult basic and secondary education" means:

a. Instructional services for adults:

(1) Who do not have the basic literacy skills to enable them to function effectively in society; or

(2) Who do not have a certificate of graduation from a school providing secondary education or who have not reached a level of education equivalent to the level obtained when a certificate of graduation is issued.

b. Education for adults whose inability to speak, read, or write the English language constitutes a substantial impairment of their ability to obtain or retain employment commensurate with their real ability. The education must be designed to help eliminate the inability and raise the level of education of such adults with a view to making them less likely to become dependent on others, to improving their ability to benefit from educational or occupational training and increasing their opportunities for more productive and profitable employment, and to making them better able to meet their adult responsibilities.

Revolving school district equipment and software fund - Continuing appropriation. There is hereby established in the department of public instruction a revolving school district equipment and software fund for the

cooperative purchase of equipment and software for school districts to enable all school districts to receive the benefits of quantity purchase agreements. A service charge shall be added to the cost of the equipment and software to cover costs associated with the compiling of purchase orders from school districts for submission to suppliers, the preparation of invoices, the receipt of payments from school districts, and shipping charges. Clerical and related costs associated with the operation of the revolving equipment and software fund shall be paid by the fund. Funds remaining in the revolving equipment fund at the end of a fiscal year are to be used to support conferences which focus on the use of computers and related technology. Moneys received by the fund are appropriated for the purposes provided in this section.

SECTION 9. A new section to chapter 15-27.4 of the North Dakota Century Code is hereby created and enacted to read as follows:

Unobligated cash balance of dissolved school district - Tax credits. The unobligated cash balance in excess of ten thousand dollars which is not designated for indebtedness of any school district dissolved after January 1, 1989, is a credit for the residents of the dissolved school district against taxes levied by the school district the dissolved school district is attached to in the year or years following the dissolution depending on the average local effort based on the previous five-year average as calculated by the county superintendent. If a school district is dissolved and attached to more than one school district, the credit that the residents of the attached school district receive from the receiving school district must be in the same proportion to the remaining unobligated cash balance as the taxable valuation of the property bears to the total taxable valuation of the property in the school district that existed prior to dissolution.

SECTION 10. AMENDMENT. The new section to chapter 15-34.1 of the North Dakota Century Code as created by section 6 of House Bill No. 1421, as approved by the fifty-first legislative assembly, is hereby amended and reenacted to read as follows:

State aid. For purposes of allocating foundation aid and other state assistance to local school districts, ~~students~~ a student receiving home-based instruction ~~shall be~~ is deemed enrolled in the school district in which ~~they~~ reside the student resides if the student is supervised by a certificated teacher employed by the public school district in which the parent resides. A school district is entitled to one-half of the per-pupil payment provided in section 15-40.1-06 times the appropriate factor in section 15-40.1-07 or 15-40.1-08 for each such student.

SECTION 11. AMENDMENT. Section 15-60-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-60-03. Purposes and general powers.

1. The state school construction fund is created for the purpose of constructing and improving public school buildings, and furnishing and equipping the same for use as public schools; as a part of the public school system of the state of North Dakota under the jurisdiction of the Department of Public Instruction. The board is hereby granted and shall have and may exercise all the powers necessary or convenient for the carrying out of the aforesaid

purposes including, but without limiting the generality of the foregoing, the following rights and powers:

- a. To sue and be sued in all courts.
- b. To acquire, purchase, hold, lease, sell, transfer, dispose of, or use any property, real, personal or mixed, tangible or intangible, or any interest therein, necessary or desirable for carrying out the purposes of the state school construction fund.
- c. To acquire by purchase, lease, or otherwise and to construct, improve, and repair projects.
- d. To make bylaws for the management and regulation of its affairs.
- e. To appoint officers, agents, employees, and servants, to prescribe their duties, and to fix their compensation.
- f. To fix, alter, charge, and collect rentals and other charges for the use of the facilities or, for the services rendered by, the board or projects thereof, at reasonable rates to be determined by it for the purpose of providing for the payment of the expenses of the board, the construction, improvement, and repair of its facilities and properties, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations.
- g. To make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business.
- h. To have the power of eminent domain.
- i. To pledge, hypothecate, and otherwise encumber, all or any of the revenues or receipts of the fund as security for all, or any of, the obligations of the board.
- j. To do all acts and things necessary or convenient to carry out the powers granted to it by this chapter or any other acts.

There is established a state school construction fund to be maintained by the board at the Bank of North Dakota. The board may use the fund to buydown or reduce the interest paid by a school district on the Bank's portion of the construction loan. The interest buydown program under this section must be implemented under rules adopted by the board.

- 2. The board shall have no power at any time or in any manner to pledge the credit or taxing power of the state or any other school districts. No obligations or debts of the board shall be deemed to be obligations of the state or any other school districts, and the state or any other school districts shall not be liable for the payment of principal or interest on such obligations. The board Bank of North Dakota shall at no time enter into any contract with a school district under the provisions of this chapter, unless such

school district is at that time annually levying a sufficient mill levy which the board has determined will provide for repayment of the contracted loan within twenty years after the initial payment from the ~~state school construction fund~~ Bank of North Dakota to the school district, but a school district shall not borrow more than thirty percent of the taxable valuation of the district or five million dollars from the ~~fund~~ Bank and shall not be permitted to levy less than ten mills for the maintenance of a building fund. The loan contracted for by the school district from the Bank must be repaid by the school district together with two and one-half percent interest per annum. The interest buydown fund must be used by the board to cover the difference between the Bank's current loan rate and the rate of two and one-half percent interest per annum. The levy required by this section for repayment must be maintained over the life of the contract with the ~~board~~ Bank, and the school district must have at the time of the loan an existing indebtedness to the maximum limit permitted by law. In determining whether a school district has an existing indebtedness to the maximum limit permitted by law for purposes of this section, the value of taxable property means twice the taxable value of all taxable property in the school district.

3. All contracts between the ~~board~~ Bank and school districts shall be conditioned upon the preparation of general plans for the orderly development of improved attendance areas and administrative units and for the improved housing of the public schools of the state. These plans shall be prepared cooperatively by local, county, and state school authorities, in accordance with standards and regulations prescribed by the department. The department shall have authority and its duty shall be to review all construction projects to determine:
 - a. The extent to which they conform to state plans.
 - b. The amount of improvement to be brought about in attendance areas and administrative units.
 - c. The usefulness and adequacy of the proposed building for classroom purposes with respect to design, location, safety, comfort, and convenience.
 - d. The ability of the local school district or districts to amortize the cost of construction and to defray the cost of operation and maintenance.
4. No contract shall be executed between the ~~board~~ Bank and school district without the specific written approval of the department.

SECTION 12. AMENDMENT. Section 15-60-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-60-06. Governing body. The board shall meet for the purpose of ~~making plans for the administration of the school construction fund and the~~ receiving and reviewing of applications for construction or improvements. Five members of the board shall constitute a quorum for the purpose of conducting the business thereof and for all other purposes, and all other actions shall be taken by a unanimous vote of the quorum. The board shall

have full authority to manage the properties and business of the board. The board, acting through the office of the superintendent of public instruction, shall fix and determine the number of officers, agents, and employees it shall employ and their respective compensation and duties, and may delegate to one or more of their number, or to one or more of said officers, agents, or employees, such powers and duties as it may deem proper.

* SECTION 13. AMENDMENT. Section 15-60-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-60-07. Moneys of the fund. The custodian of the building fund of any school district for which a building or an addition to an existing building has been constructed shall pay annually to the ~~state treasurer~~ Bank of North Dakota all moneys due as ~~rental or rentals~~ loan payments together with two and one-half percent interest as herein provided, ~~which money shall be credited to the state school construction fund.~~ For those contracts in force before July 1, 1989, the school district will continue to pay the rental payments, plus two and one-half percent interest to the state treasurer to be deposited into the state school construction fund. The moneys in ~~said account~~ the fund shall be paid out on the warrant or other order by the chairman and secretary of the board. The state auditor or his legally authorized representatives are hereby authorized and directed to audit the accounts and books of the board, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other matters relating to its finances, operation, and affairs annually.

SECTION 14. Two new sections to chapter 15-65 of the North Dakota Century Code are hereby created and enacted to read as follows:

Telecommunications grants - Matching by school districts. The educational telecommunications council may require a school district to provide up to twenty-five percent in matching funds to receive any funds appropriated or that may otherwise become available for telecommunications.

Plan for statewide system of interactive telecommunications - Solicitation of grants. In developing and implementing a plan for a statewide system of interactive telecommunications, the educational telecommunications council shall solicit grants to be used in conjunction with moneys appropriated by the legislative assembly for telecommunications. Any moneys appropriated by the legislative assembly for telecommunications, unless specifically provided otherwise, and any grants received in accordance with this section must be used to implement the plan developed by the educational telecommunications council pursuant to this chapter.

SECTION 15. AMENDMENT. Subdivision j of subsection 1 of section 57-15-14.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- j. The removal of asbestos substances from school buildings or the abatement of asbestos substances in school buildings under any method approved by the United States environmental protection agency and any repair, replacement, or remodeling that results from such removal or abatement.

SECTION 16. AMENDMENT. Subsection 1 of section 57-15-17.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 15-60-07 was also amended by section 1 of House Bill No. 1087, chapter 246.

1. The governing body of any public school district may by resolution adopted by a two-thirds vote of the school board dedicate a tax levy for purposes of this section of not exceeding fifteen mills on the dollar of taxable valuation of property within the district for a period not longer than fifteen years. The school board may authorize and issue general obligation bonds to be paid from the proceeds of this dedicated levy for the purpose of providing funds for the removal of asbestos substances from school buildings or the abatement of asbestos substances in school buildings under any other method approved by the United States environmental protection agency and for any repair, replacement, or remodeling that results from removal or abatement of asbestos substances.

SECTION 17. LEGISLATIVE COUNCIL STUDY OF EDUCATION FINANCE ISSUES. It is recommended that an interim legislative council committee, consisting of legislators and three professional educators including one educator from a small school district, one educator from a medium school district, and one educator from a large school district, to be selected by the legislative council, shall conduct a study during the 1989-90 interim of education finance issues, including the issues of adequate funding for school districts, inequities in the distribution of transportation aid to schools, local effort in support of schools, and other funding sources including federal programs and energy taxes revenue. The interim committee shall review the operation and effect of any laws passed during the 1989 legislative session affecting the county superintendents of schools, ending balances of school districts, reorganization of school districts, educational telecommunications, testing, and nonaccreditation of schools.

SECTION 18. DIVISION OF INDEPENDENT STUDY FILM RENTAL INCOME. The amount included in the estimated income line item in subdivision 1 of this Act relating to the division of independent study film rental that exceeds \$684,110 shall be appropriated and used by the department of public instruction for telecommunication grants.

SECTION 19. REPEAL. Sections 15-60-04, 15-60-05, and 15-60-09 of the North Dakota Century Code are hereby repealed.

SECTION 20. LEGISLATIVE INTENT. It is the intent of the 1989 legislative assembly that funds included in the grants - special education line item as included in subdivision 1 of this Act may be used as matching funds for federal medicaid funds allowable under the Medicare Catastrophic Act of 1988 for services to eligible children. The payments shall be made to the human services joint medicaid payment account as directed by the department of human services.

SECTION 21. LEGISLATIVE INTENT. It is the intent of the 1989 legislative assembly that of the total amount of \$4,405,132 included in subdivision 2 of this Act for the grants - vocational, postsecondary line item, \$2,361,160 shall be distributed to Bismarck state college, \$1,047,992 to the university of North Dakota - Williston, and \$995,980 to the university of North Dakota - lake region.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 3

HOUSE BILL NO. 1004
(Committee on Appropriations)

OFFICE OF MANAGEMENT AND BUDGET

AN ACT to make an appropriation for defraying the expenses of the various divisions under the supervision of the director of the office of management and budget of the state of North Dakota; to amend and reenact subsection 3 of section 19-02.1-14.1 as amended in section 1 of House Bill No. 1298, approved by the fifty-first legislative assembly, and section 54-14-08 of the North Dakota Century Code, relating to print size requirements for legends on drug prescription forms and the withholding of amounts of state employees' compensation; to provide for transfers from the preplanning revolving fund and the state aid distribution fund; to provide an exemption to the provisions of section 54-44.1-11; to provide for an appropriation to various state agencies and institutions for payment of health insurance for part-time employees; to provide for a transfer to the pay equity implementation fund; to provide for a loan from the Bank of North Dakota to match federal disaster funds; to provide a contingent appropriation to the water commission, the department of health and consolidated laboratories, and the highway department for engineers' salaries; to provide for appropriation reduction authority; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the various divisions under the supervision of the director of the office of management and budget of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.

OFFICE OF MANAGEMENT AND BUDGET

Salaries and wages	\$ 5,214,608
Data processing	2,155,745
Operating expenses	3,000,785
Equipment	76,785
Grants, benefits, and claims	25,731,143
Boys and girls clubwork	53,000
State memberships	193,035
Total all funds	\$36,425,101
Less estimated income	29,330,985
Total general fund appropriation	\$ 7,094,116

Subdivision 2.

CENTRAL DATA PROCESSING

Salaries and wages	\$ 7,653,568
Operating expenses	20,746,574
Equipment	5,532,000
Total special funds appropriation	<u>\$33,932,142</u>

Subdivision 3.

CENTRAL DUPLICATING SERVICES

Salaries and wages	\$ 851,463
Data processing	25,000
Operating expenses	1,428,905
Equipment	27,000
Total special funds appropriation	<u>\$ 2,332,368</u>
Grand total general fund appropriation H.B. 1004	\$ 8,876,972
Grand total special funds appropriation H.B. 1004	\$68,758,943
Grand total all funds appropriation H.B. 1004	<u>\$77,635,915</u>

SECTION 2. TRANSFER AUTHORITY. Upon approval of the emergency commission, the director of the office of management and budget may transfer appropriation authority contained in the various subdivisions in section 1 of this Act.

SECTION 3. ADDITIONAL INCOME. All income in excess of estimated income in the budget appropriated by the legislative assembly to the office of management and budget for the biennium beginning July 1, 1989, and ending June 30, 1991, must be deposited in the appropriate operating funds in the state treasury and can be expended with the authorization of the emergency commission.

SECTION 4. EXEMPTION. The data processing appropriation contained in section 1 of chapter 40 of the 1987 Session Laws shall not be subject to the provisions of section 54-44.1-11 and any unexpended funds from this appropriation shall be available for continued development and operation of the accounting, management, and payroll systems during the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 5. TRANSFER. The balance remaining in the preplanning revolving fund at the close of the 1987-89 biennium, is hereby authorized for transfer to the general fund in the state treasury. Such moneys shall be transferred during the biennium beginning July 1, 1989, and ending June 30, 1991, at the direction of the office of management and budget.

SECTION 6. TRANSFER. Notwithstanding the provisions of section 57-39.2-26.1, there is hereby transferred the sum of \$1,600,000 from the state aid distribution fund to the general fund for the biennium beginning July 1, 1989, and ending June 30, 1991. Such transfer shall not reduce the amount of moneys that would otherwise be available for handicap accessibility projects pursuant to section 3 of House Bill No. 1018 as passed by the fifty-first legislative assembly. If a reduction is required pursuant to section 13 of this Act, the office of management and budget may also transfer the amount related to payments to political subdivisions not to exceed \$2,150,000 from the state aid distribution fund to the general fund. The money shall be transferred upon the direction of the office of management and budget. The amount transferred by this section shall not be considered an amount deposited in the state aid distribution fund for purposes of section 4 of House Bill No. 1018 as approved by the fifty-first legislative assembly.

SECTION 7. APPROPRIATION. The sums hereinafter listed, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund and from special funds in the state treasury, not otherwise appropriated, to the agencies and institutions of state government listed below for the purpose of paying health insurance premiums for part-time employees, previously excluded in the executive budget due to Senate Bill No. 2254 which has since been defeated, for the period beginning July 1, 1989, and ending June 30, 1991:

AGENCY	GENERAL FUND	SPECIAL FUNDS	TOTAL
Attorney General	\$ 3,365	\$	\$ 3,365
Director of Institutions	1,198		1,198
Department of Public Instruction	2,483	3,278	5,761
State Library	7,927		7,927
School for the Deaf	19,725		19,725
School for the Blind	29,841		29,841
Veterans' Home	958		958
Department of Human Services	176,519	240,778	417,297
Governor's Office - Protection and Advocacy Project	13,458		13,458
Bank of North Dakota		27,146	27,146
Job Service North Dakota		40,833	40,833
Department of Corrections and Rehabilitation	19,514		19,514
Seed Department		3,365	3,365
Wheat Commission		1,682	1,682
Soil Conservation Committee	1,198		1,198
Industrial Commission		3,365	3,365
Game and Fish Department		3,365	3,365
Parks and Recreation Department	2,395		2,395
Water Commission	3,365		3,365
Highway Department		10,094	10,094
Total	<u>\$281,946</u>	<u>\$333,906</u>	<u>\$615,852</u>

SECTION 8. AMENDMENT. Subsection 3 of section 19-02.1-14.1 of the 1987 Supplement to the North Dakota Century Code as amended in section 1 of House Bill No. 1298, as approved by the fifty-first legislative assembly, is hereby amended and reenacted to read as follows:

3. If a practitioner prescribes a drug by its brand name, the pharmacist may exercise professional judgment in the economic interest of the patient by selecting a drug product with the same generic name and demonstrated therapeutical equivalency as the one prescribed for dispensing and sale to the patient unless the practitioner specifically indicates in the practitioner's own handwriting "brand necessary" on a written prescription or expressly indicates that an oral prescription is to be dispensed as communicated. The pharmacist shall note the instructions on the file copy of the prescription. A reminder legend must be placed on all prescription forms. The legend must state: "In order to require that a brand name product be dispensed, the practitioner must handwrite the words 'brand necessary'." The legend printed on

the prescription form must be in at least ~~sixteen point~~ six-point uppercase print. The pharmacist shall not substitute a generic name drug product unless its price to the purchaser is less than the price of the prescribed drug product. In addition, a pharmacist shall not substitute drug products in the following dosage forms: enteric coated tablets, controlled release products, injectable suspensions other than antibiotics, suppositories containing active ingredients for which systemic absorption is necessary for therapeutic activity, and different delivery systems for aerosol and nebulizer drugs. In the event that any drug listed above is, subsequent to January 1, 1982, determined to be therapeutically equivalent, then the previously mentioned substitution ban shall be automatically removed for that drug. The pharmacist shall inform the person receiving the drug when a prescription for a brand name drug product does not require that the prescribed drug be dispensed and of the person's right to refuse a generic name drug product selected by the pharmacist. The pharmacy file copy of every prescription shall include the brand name, if any, or the name of the manufacturer, packer, or distributor of the generic name drug dispensed. A pharmacist who selects and dispenses a therapeutically equivalent generic name drug product shall assume no greater liability for selecting the dispensed drug product than would be incurred in filling a prescription for a drug product prescribed by its generic name. The practitioner is not liable for the substitution made by a pharmacist.

SECTION 9. AMENDMENT. Section 54-14-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-14-08. All departments, agencies, boards, commissions, and institutions in state government shall have the authority to withhold certain amounts from state employees' compensation. All departments, agencies, boards, commissions, and institutions in state government shall compute and withhold from state employees' monetary compensation only those amounts which are required by law to be withheld and only those other items approved by the office of the budget. However, amounts may not be withheld or deducted from state employees' monetary compensation for the payment of insurance premiums, except life or health insurance premiums or amounts deferred to fund a deferred compensation program, unless otherwise specifically authorized by law.

SECTION 10. APPROPRIATION - GENERAL FUND TRANSFER TO PAY EQUITY IMPLEMENTATION FUND. There is hereby appropriated and authorized the transfer to the pay equity implementation fund in the state treasury, the sum of \$1,157,000, or so much thereof as may be necessary, from the general fund in the state treasury for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 11. CONTINGENT APPROPRIATION - LOAN AUTHORIZATION - BANK OF NORTH DAKOTA PROFITS - EMERGENCY COMMISSION. There is hereby appropriated and authorized the transfer of \$1,500,000, or so much thereof as may be necessary, from the undivided profits of the Bank of North Dakota to the emergency commission to provide a loan to match federal funds, which are also hereby appropriated to the emergency commission, under the Robert T. Stafford Disaster Emergency Assistance Act [Pub. L. 93-288, as amended] for the period beginning with the effective date of this Act and ending June 30, 1991. The

\$1,500,000 appropriation is contingent upon the ability to match federal funds. The emergency commission shall transfer the appropriation authority to state agencies and institutions to provide disaster relief in accordance with federal law. Costs recovered by the state agencies and institutions for which a transfer of funds was made must be deposited in the Bank of North Dakota for the purpose of repaying the loan authorized under this section. The emergency commission may use moneys in the state contingency fund to repay the Bank of North Dakota if those funds are not otherwise needed. In addition to principal repayment, the Bank of North Dakota shall receive interest at the same rate earned by the general fund. If it is estimated that at the end of the 1989-91 biennium a balance will exist on the loan, the emergency commission shall request the 1991 legislative assembly for a deficiency appropriation to repay the loan.

SECTION 12. CONTINGENT APPROPRIATION - ENGINEER SALARIES. The sums hereinafter listed, or so much thereof as may be necessary, are hereby appropriated, subject to central personnel division review and approval, out of any moneys in the general fund in the state treasury and from the special funds of the agencies listed, not otherwise appropriated, to the agencies and institutions of state government listed below for the purpose of providing salary increases to engineers for the period beginning July 1, 1989, and ending June 30, 1991:

	GENERAL FUND	SPECIAL FUNDS	TOTAL
Water commission	\$ 180,000		\$ 180,000
Department of health and consolidated laboratories	163,910	\$ 163,910	327,820
Highway department		1,165,632	1,165,632
Total	\$ 343,910	\$ 1,329,542	\$ 1,673,452

SECTION 13. APPROPRIATION AUTHORITY REDUCTIONS. If the most recent forecast of the state general fund ending balance for the 1989-91 biennium is a negative balance, the director of the budget shall certify that fact to the governor and the budget section of the legislative council.

After certification and upon the approval of the budget section, the appropriation authority enacted by the fifty-first legislative assembly is, prior to the application of section 54-44.1-12 or 54-44.1-13.1, proportionately reduced for each entity for which an appropriation from the state general fund or the state aid distribution fund was made by the fifty-first legislative assembly, as provided in this section. The total reductions must be in an amount to provide for an estimated ending balance that is not a negative balance at the end of the 1989-91 biennium, provided that in no event may the reduction in appropriation authority under this section exceed \$20,000,000. The amount of each reduction in appropriation authority must be proportional to the amounts provided in this section and the maximum reduction for each entity may not exceed the following amounts:

Superintendent of public instruction, not including the schools for blind and deaf or division of independent study	\$ 4,660,000
Board of higher education, including the institutions and offices under its control, except for the agricultural experiment station and the extension service	6,680,000
Department of human services	3,110,000
Payments to political subdivisions from the state aid distribution fund	2,150,000

Judicial branch	490,000
Legislative branch	170,000
Other	<u>2,740,000</u>
Total	\$20,000,000

The amount of \$2,740,000 included as other must be reduced proportionately by the office of management and budget from other general fund appropriations not otherwise reduced by this Act. The chief justice of the supreme court shall determine the line items from which reductions are to be made for the judicial branch and the chairman of the legislative council shall determine the line items from which reductions are to be made for the legislative branch.

SECTION 14. CONTINGENT SUSPENSION. The provisions of this Act supersede sections 54-44.1-12 and 54-44.1-13.1 if it is determined reductions are needed as provided in section 13 for appropriations from the state general fund or the state aid distribution fund for the period July 1, 1989, through June 30, 1991, unless for any reason the provisions of section 13 of this Act are not effective. If the reductions in appropriation authority provided in section 13 are not sufficient to meet the shortfall in an affected fund, the provisions of sections 54-44.1-12 and 54-44.1-13.1 are applicable for additional reductions in appropriation authority.

SECTION 15. EMERGENCY. Section 11 of this Act is declared to be an emergency measure.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 4

HOUSE BILL NO. 1005
(Committee on Appropriations)

DIRECTOR OF INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of the director of institutions of the state of North Dakota; to provide for a transfer from the capitol building fund; to provide for a statement of legislative intent regarding state employee compensation adjustments; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from other income to the director of institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$3,110,245
Operating expenses	2,906,832
Equipment	34,030
Capital improvements	1,466,350
Institutional medical fees	180,000
Total all funds	<u>\$7,697,457</u>
Less estimated income	<u>1,479,650</u>
Total general fund appropriation	<u>\$6,217,807</u>

SECTION 2. TRANSFER - CAPITOL BUILDING FUND. The amount of \$1,416,350, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act is hereby appropriated and shall be transferred by the office of management and budget from the capitol building fund to the director of institutions for the period beginning with the effective date of this section and ending June 30, 1991.

SECTION 3. LEGISLATIVE INTENT - STATE EMPLOYEE COMPENSATION ADJUSTMENTS - GUIDELINES. It is the intent of the fifty-first legislative assembly that 1989-91 compensation adjustments for state employees in the classified service are to be average increases of 7.1 percent beginning with the month of July 1989 to be paid in August 1989. All classified employees not on a probation status are entitled to receive increases of at least fifty dollars per month. Pay grade maximums shall not limit the amount of such an increase. No further increases are provided in the appropriations made by the fifty-first legislative assembly for the 1989-91 biennium.

SECTION 4. EMERGENCY. The capital improvements line item in section 1 and section 2 of this Act are declared to be emergency measures.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 5

HOUSE BILL NO. 1006
(Committee on Appropriations)

SCHOOL FOR THE DEAF — SCHOOL FOR THE BLIND

AN ACT making an appropriation for defraying the expenses of the school for the deaf and the school for the blind of the state of North Dakota; to provide for a statement of legislative intent; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the school for the deaf and the school for the blind under the supervision of the director of institutions of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.

SCHOOL FOR THE DEAF

Salaries and wages	\$ 3,166,536
Operating expenses	722,833
Equipment	30,075
Capital improvements	153,500
Total all funds	\$ 4,072,944
Less estimated income	487,011
Total general fund appropriation	\$ 3,585,933

Subdivision 2.

SCHOOL FOR THE BLIND

Salaries and wages	\$ 2,217,546
Operating expenses	471,879
Equipment	10,540
Capital improvements	12,600
Total all funds	\$ 2,712,565
Less estimated income	433,310
Total general fund appropriation	\$ 2,279,255
Grand total general fund appropriation H.B. 1006	\$ 5,865,188
Grand total special funds appropriation H.B. 1006	\$ 920,321
Grand total all funds appropriation H.B. 1006	\$ 6,785,509

SECTION 2. LEGISLATIVE INTENT. It is the intent of the 1989 legislative assembly that a portion of the general fund appropriation included in subdivision 2 of section 1 of this Act may be used as matching funds for receipt of federal medicaid funds for services to eligible multihandicapped visually impaired persons. The payments shall be made to the human services joint medicaid payment account as directed by the department of human services.

SECTION 3. EMERGENCY. The capital improvements line item contained in subdivision 1 of section 1 of this Act is hereby declared to be an emergency measure.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 6

HOUSE BILL NO. 1007
(Committee on Appropriations)

STATE LIBRARY

AN ACT making an appropriation for defraying the expenses of the state library of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state library under the supervision of the director of institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$1,370,068
Data processing	8,369
Operating expenses	870,438
Equipment	13,400
Grants, benefits, and claims	1,050,000
Total all funds	\$3,312,275
Less estimated income	946,023
Total general fund appropriation	\$2,366,252

SECTION 2. APPROPRIATION. The line item entitled grants, benefits, and claims in section 1 of this Act includes \$1,000,000 for aid to public libraries of which no more than one-half is to be expended during the fiscal year ending June 30, 1990.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 7

HOUSE BILL NO. 1008
(Committee on Appropriations)

RADIO COMMUNICATIONS DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the radio communications department of the state of North Dakota and providing for a transfer from the state highway fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys from special funds derived from federal funds and other income, to the state radio communications department under the supervision of the director of institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$1,609,403
Data processing	365,578
Operating expenses	1,769,136
Equipment	155,000
Total special fund appropriation	<u>\$3,899,117</u>

SECTION 2. APPROPRIATION - TRANSFER. The amount of \$3,624,117, or so much thereof as is necessary, is hereby appropriated and shall be transferred from the state highway fund to the state radio communications department as directed by the office of management and budget during the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 8

HOUSE BILL NO. 1009
(Committee on Appropriations)

CONSTITUTIONAL CELEBRATION COMMITTEE

AN ACT providing an appropriation for defraying the expenses of the constitutional celebration committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds or other income, to the North Dakota supreme court for the purpose of defraying the expenses of the constitutional celebration committee for the celebration of the bicentennial of the United States Constitution and the centennial of the North Dakota Constitution for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Operating expenses	\$ 70,000
Equipment	5,000
Grants, benefits, and claims	25,000
Total all funds	\$100,000
Less estimated income	50,000
Total general fund appropriation	\$ 50,000

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 9

HOUSE BILL NO. 1010
(Committee on Appropriations)

DIVISION OF EMERGENCY MANAGEMENT

AN ACT making an appropriation for defraying the expenses of the division of emergency management of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the division of emergency management under the supervision of the adjutant general of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$1,144,484
Operating expenses	397,326
Equipment	33,000
Total all funds	\$1,574,810
Less estimated income	1,226,223
Total general fund appropriation	\$ 348,587

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 10

HOUSE BILL NO. 1011
(Committee on Appropriations)

ADJUTANT GENERAL AND CIVIL AIR PATROL

AN ACT to provide for an appropriation for defraying the expenses of the adjutant general of the state of North Dakota and the civil air patrol; to provide for an appropriation and transfer of funds from the national guard tuition trust fund; and to provide for a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds or other income, to the adjutant general's office and the civil air patrol for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.

ADJUTANT GENERAL

Salaries and wages	\$ 1,235,426
Operating expenses	1,690,229
Equipment	38,185
Capital improvements	510,000
Grants, benefits, and claims	532,362
Inauguration	1,744
Recruiting and retention	29,910
Army guard contract	4,050,000
Tuition fees	750,000
Air guard contract	3,017,100
Total all funds	\$11,854,956
Less estimated income	8,801,449
Total general fund appropriation	\$ 3,053,507

Subdivision 2.

CIVIL AIR PATROL

Salaries and wages	\$ 49,215
Operating expenses	35,691
Total general fund appropriation	\$ 84,906
Grand total general fund appropriation	\$ 3,138,413
Grand total special funds appropriation	\$ 8,801,449
Grand total all funds appropriation	\$11,939,862

SECTION 2. APPROPRIATION - TRANSFER - NATIONAL GUARD TUITION TRUST FUND. The amount of \$2,634,349, or so much thereof as is necessary, included in the estimated income line item in section 1 of this Act is hereby

appropriated and shall be transferred from the national guard tuition trust fund to the adjutant general for the tuition programs provided for in North Dakota Century Code chapters 37-07.1 and 37-07.2 and for adjutant general operations for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 3. LEGISLATIVE INTENT - NATIONAL GUARD ARMORIES. It is the intent of the legislative assembly that the adjutant general not vacate any armories prior to July 1, 1989, and that the adjutant general receive the approval of the budget section of the legislative council prior to vacating any armories during the period beginning July 1, 1989, and ending June 30, 1991. However, if the city in which an armory is located does not object to an armory being vacated, the adjutant general may vacate the armory without the approval of the budget section of the legislative council.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 11

HOUSE BILL NO. 1012
(Committee on Appropriations)

DEPARTMENT OF HUMAN SERVICES

AN ACT making an appropriation for defraying the expenses of the department of human services, making an appropriation and transfer from the lands and minerals trust fund to the common schools trust fund, and making an appropriation of excess revenues generated by human service centers; to establish a joint medicaid payment account; and to provide legislative intent statements relating to human service center operating expenses, chemical dependency treatment services, the Family Support Act of 1988, the guardianship project, and the use of child support incentive payments; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of human services and its various divisions for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$134,431,003
Data processing	11,330,151
Operating expenses	42,502,943
Equipment	1,082,113
Capital improvements	1,969,657
Grants, benefits, and claims	560,402,363
Community chemical dependency treatment enhancement	534,000
Developmentally disabled facility loan fund	1,837,956
Total all funds	\$754,090,186
Less estimated income	517,062,486
Total general fund appropriation	\$237,027,700

SECTION 2. TRANSFER. The amount of \$1,837,956, or so much thereof as may be necessary, for the line item entitled developmentally disabled facility loan fund in section 1 of this Act is appropriated for the purpose of making payments of principal and interest from the lands and minerals trust fund to the common schools trust fund on any loans made from it pursuant to the developmentally disabled facility loan fund program no. 2 and 3 for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 3. APPROPRIATION. All collections from nonfederal sources by human service centers in excess of amounts included as revenue in section 1 of this Act are hereby appropriated to the department of human services for the purpose of staff development, training, or other purposes approved by the

executive director and can only be expended by authorization of the emergency commission.

SECTION 4. JOINT MEDICAID PAYMENT ACCOUNT - EDUCATIONALLY RELATED SERVICES. The state treasurer shall establish a joint medicaid payment account for the department of human services and the department of public instruction to pay for services provided handicapped children allowed under the Medicare Catastrophic Act of 1988. This account shall be for the receipt and payment of department of public instruction matching funds and department of human services federal medicaid funds for the purpose of making payments to the provider or providers of services as directed by the department of human services. The department of public instruction shall provide the department of human services such administrative services in the documentation and payment of these funds as the department of human services may request.

SECTION 5. LEGISLATIVE INTENT - COMMUNITY CHEMICAL DEPENDENCY TREATMENT ENHANCEMENT. It is the intent of the legislative assembly that the community chemical dependency treatment enhancement line item in section 1 of this Act of \$534,000 from the general fund be used for the development of community-based social detoxification, assessment, and counseling services while maintaining a chemical dependency unit at the state hospital. Of the total, \$384,000 is provided for development of community social detoxification/assessment services by April 1, 1990. It is the intent of the legislative assembly that as these community services are developed a reduction in admissions to the state hospital will be achieved resulting in reducing the number of wards at the hospital from four to three by July 1, 1990. Of the total, \$150,000 shall be provided to enhance additional addiction services for the population diverted from the state hospital. These services shall be community based and may include residential care and counseling services.

SECTION 6. LEGISLATIVE INTENT - FAMILY SUPPORT ACT OF 1988. Provided within the general fund moneys appropriated under section 1 of this Act is \$2,462,740 to defray the state's estimated share of the costs to implement the mandatory features of the Family Support Act of 1988 [Pub. L. 100-485; 102 Stat. 2343] during the biennium beginning July 1, 1989, and ending June 30, 1991. The legislative assembly recognizes the need to comply with the mandatory provisions of the Family Support Act of 1988 and the uncertainties inherent in estimating the money necessary to comply with the new program requirements. If the \$2,462,740 from the general fund is determined by the department of human services to be insufficient to comply with the federal enactment during the biennium beginning July 1, 1989, and ending June 30, 1991, the department shall report to the budget section the amount of the projected deficiency appropriation that will be introduced to the fifty-second legislative assembly.

SECTION 7. LEGISLATIVE INTENT - GUARDIANSHIP PROJECT. It is the intent of the legislative assembly that \$50,000 appropriated under section 1 of this Act be used by the department of human services to defray the costs of a pilot temporary guardianship project. For such purposes, the department may contract with a nonprofit corporation established to provide guardianship services on behalf of incapacitated persons with no guardian for whom an emergency exists and the court finds immediate action is necessary. Such guardianship shall be for a specific period not to exceed six months. The department shall prescribe guidelines for the project and evaluate the project operations.

SECTION 8. LEGISLATIVE INTENT - CHILD SUPPORT INCENTIVE PAYMENTS. It is the intent of the legislative assembly that twenty-five percent of the incentive money received under Title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq., as amended] shall be used by the department of human services to assist in the payment of the state share of the cost of programs administered under chapter 50-09.

SECTION 9. EMERGENCY. The community chemical dependency treatment enhancement line item in section 1 of this Act and section 5 of this Act are declared to be emergency measures.

Approved April 15, 1989
Filed April 17, 1989

CHAPTER 12

HOUSE BILL NO. 1013
(Committee on Appropriations)

SOIL CONSERVATION

AN ACT making an appropriation for defraying the expenses of the soil conservation committee and soil conservation districts of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the soil conservation committee and districts of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$ 336,702
Data processing	200
Operating expenses	260,347
Equipment	1,500
Grants, benefits, and claims	691,251
Total general fund appropriation	\$ 1,290,000

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 13

HOUSE BILL NO. 1014
(Committee on Appropriations)

ATMOSPHERIC RESOURCE BOARD

AN ACT making an appropriation for defraying the expenses of the atmospheric resource board of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the atmospheric resource board of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$ 330,409
Data processing	18,847
Operating expenses and development	1,663,232
Equipment	11,872
Research - atmospheric resource	1,050,000
Technology transfer/research/operational assistance	2,000,000
Total all funds	\$5,074,360
Less estimated income	4,542,323
Total general fund appropriation	\$ 532,037

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 14

HOUSE BILL NO. 1015
(Committee on Appropriations)

MISCELLANEOUS REFUNDS AND COMMISSIONS

AN ACT to make an appropriation for defraying expenses of various commissions, departments, and divisions of the state of North Dakota; and to amend and reenact section 54-14-03.2 of the North Dakota Century Code, relating to claims against the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from income to the various stated commissions, departments, and divisions of the state of North Dakota for the purpose of defraying the expenses for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.	
EMERGENCY COMMISSION	
State contingencies	\$ 500,000
Total general fund appropriation	\$ 500,000
Subdivision 2.	
UNEMPLOYMENT INSURANCE	
Grants, benefits, and claims	\$2,000,000
Total special funds appropriation	\$2,000,000
Subdivision 3.	
YELLOWSTONE - MISSOURI - FORT UNION COMMISSION	
Operating expenses	\$ 5,721
Total general fund appropriation	\$ 5,721
Subdivision 4.	
STATE FIREMEN'S ASSOCIATION	
Grants, benefits, and claims	\$ 49,500
Total appropriation from the state bonding fund	\$ 49,500
Subdivision 5.	
MISCELLANEOUS REFUNDS	
Grants, benefits, and claims	\$ 184,930
Total general fund appropriation	\$ 184,930
Grand total general fund appropriation H.B. 1015	\$ 690,651
Grand total special funds appropriation H.B. 1015	\$2,049,500
Grand total all funds appropriation H.B. 1015	\$2,740,151

SECTION 2. EXEMPTION. The funds herein appropriated for subdivision 3 of this Act shall not be subject to the provisions of sections 54-27-10 and 54-27-11 of the North Dakota Century Code, relating to the time during which appropriations become available.

SECTION 3. DISASTER EXPENSES. The funds appropriated in subdivision 1 of section 1 of this Act shall also be available to defray the costs of state agencies and institutions which arise as a result of natural disasters and to match federal disaster relief funds.

SECTION 4. AMENDMENT. Section 54-14-03.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-14-03.2. Claims against the state - Acts of residents of state institutions.

1. Any individual injured by an act of a resident or an inmate of a state institution may submit a claim to the office of the budget state institution where the act occurred. As used in this section, "claim" means a monetary demand upon the state for personal injury or property damage arising from an act of a resident or an inmate of a state institution, and "state institution" means the state hospital, Grafton state school, ~~San Haven~~, state penitentiary, state farm, North Dakota industrial school, school for the blind, and school for the deaf.
2. The office of the budget state institution may approve a claim for less than two thousand five hundred dollars. If the claim is approved by the office of the budget, the office shall apply to the emergency commission for an amount from the contingency fund sufficient to pay the claim. It shall be conclusively presumed upon the receipt of such application by the emergency commission that an emergency exists, and the commission shall direct the transfer of the requested amount to the office of the budget from the contingency fund. The office of the budget, upon receipt of the transfer from the contingency fund, shall pay the claim and submit the claim to the office of the budget for processing. The expenditure for the claim must be drawn from the state institution's appropriation authority.
3. The office of the budget shall forward any claim exceeding two thousand five hundred dollars to the emergency commission with the office's recommendation. If the claim is approved by the emergency commission, it shall be conclusively presumed that an emergency exists, and the commission shall direct the transfer of the approved amount to the office of the budget from the contingency fund. The office of the budget, upon receipt of the transfer from the contingency fund, shall pay the claim.
- 4- 4. Decisions of the office of the budget or the emergency commission state institution partially or totally denying a claim may not be appealed to any court of this state.
- 5- 4. Claims may not be submitted to the legislative assembly unless the claim has been partially or totally denied by the office of the budget or the emergency commission state institution.
- 6- 5. This section does not apply to a resident or an inmate of a state institution who is injured by another resident or inmate of a state institution.

Approved March 16, 1989
Filed March 16, 1989

CHAPTER 15

HOUSE BILL NO. 1016
(Committee on Appropriations)

INSURANCE PREMIUM TAX DISTRIBUTION

AN ACT making an appropriation for insurance premium tax payments distribution to fire departments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the insurance tax distribution fund in the state treasury, not otherwise appropriated, the sum of \$2,600,000, or so much thereof as may be necessary, to the commissioner of insurance for the purpose of making payments of insurance premiums to fire departments, for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 16

HOUSE BILL NO. 1017
(Committee on Appropriations)

HOMESTEAD TAX CREDIT

AN ACT making an appropriation for the homestead tax credit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state tax commissioner for the purpose of reimbursing the homestead tax credit, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Grants, benefits, and claims	\$5,000,000
Total general fund appropriation	\$5,000,000

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 17

HOUSE BILL NO. 1018
(Committee on Appropriations)

STATE AID DISTRIBUTION FUND

AN ACT making an appropriation for the distribution of state aid distribution fund revenue to local political subdivisions of the state of North Dakota; to amend and reenact section 57-58-01 of the North Dakota Century Code as amended by section 2 of chapter 35 of the 1987 Session Laws of North Dakota, relating to the distribution of personal property tax replacement funds to political subdivisions; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the state aid distribution fund in the state treasury, not otherwise appropriated, to the state treasurer of the state of North Dakota for the purpose of distributing state aid distribution fund revenue to local political subdivisions, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Grants, benefits, and claims	<u>\$54,208,300</u>
Total state aid distribution fund appropriation	<u>\$54,208,300</u>

*** SECTION 2. AMENDMENT.** Section 57-58-01, as amended by section 2 of chapter 35 of the 1987 Session Laws of North Dakota, effective July 1, 1989, is hereby amended and reenacted to read as follows:

57-58-01. Distribution to counties and local subdivisions. It is hereby provided that any political subdivision which has an existing bonded indebtedness for which a tax levy must be made in 1970 or any year thereafter, shall reduce its levy in each such year for current operating purposes by the amount which its tax levy on taxable property in that year for retirement of the bonded indebtedness is increased because of the exemption of personal property by subsection 25 of section 57-02-08. On or before February 1, 1971, the county auditor of each county shall certify to the state tax commissioner the total amount of taxes levied in the year 1968 for the state, county, cities, park boards, school districts, airport authorities, townships, and all other units of government having the authority to levy taxes, and levies voted by the people, new or present levies increased by legislative action of such county on those items of personal property exempt under the provisions of section 57-02-08, and, in addition, the total valuation of real estate and taxes levied on real estate for the year 1968. On or before ~~June 1~~ June 30, 1990, and each year thereafter, the state tax commissioner shall certify for payment to the state treasurer an amount, for payment by the state treasurer to each county, determined to be due such county based upon the personal property taxes levied in the year 1968 for the political subdivisions herein mentioned on

*** NOTE:** Section 57-58-01 was also amended by section 4 of Senate Bill No. 2384, chapter 650.

the items of personal property exempt from the personal property tax under the provisions of section 57-02-08, the per capita school tax under the provisions of former section 57-15-23, and the grain tax under the provisions of former chapter 57-03, together with any adjustments to be made in the manner hereinafter provided. Within sixty days after the receipt of the revenue as provided by this section, the county treasurer shall allocate and remit to the county, cities, park boards, school districts, airport authorities, townships, and all other units of government having the authority to levy taxes that amount of revenue which is received from the state in the same ratio as he would have distributed the revenue from the personal property tax, adjusting such amount by any increase or decrease in real property taxes as levied by each taxing authority according to the formula hereinafter provided. Any amount that would be apportioned and credited to the retirement of a bonded indebtedness existing in 1970 for which a tax levy was made in 1970 and in any year thereafter, shall be credited to the general fund of the political subdivision. In the years after 1971, payments to the counties under this section shall be made based upon ninety-five percent of such payment for 1971 together with a growth factor which shall be based upon the dollar amount of increase or decrease in real property taxes levied within each county. For each seven dollar increase in real property taxation within a county, the state shall contribute an additional one dollar over that amount which equals ninety-five percent of such payment in the base year. For each seven dollar decrease in real property taxation within a county, the state shall contribute one dollar less than that amount which equals ninety-five percent of such payment in the base year.

On or before ~~June 1, 1980~~ June 30, 1990, and each year thereafter, the state tax commissioner shall certify to the state treasurer the amount determined to be due to the state based upon the personal property taxes levied in the year 1968 for the North Dakota state medical center. The amount so certified shall be computed in accordance with the formula provided in this section for computing the amounts to be certified and paid to the counties. The state treasurer upon receiving the certification from the tax commissioner shall transfer from the general fund to the credit of the North Dakota state medical center the amount so certified.

Any political subdivision which levied taxes on taxable property in the year 1970 for a specific fund or purpose for which a levy was not made by it in the year 1968 shall be entitled to a distribution of revenue from the state in the year 1971 for any such levy. The amount of such distribution shall be determined as follows: the county auditor shall certify to the state tax commissioner as soon as possible after March 30, 1971, the amount of each such levy made by and spread for each political subdivision on taxable real property in the county in the year 1970; the tax commissioner shall forthwith determine the correctness of such amounts and certify to the state treasurer for immediate payment to the county an amount that is determined by dividing the total of such levies made and spread in 1970 on taxable real property in the county by the growth factor that is provided in the first paragraph of this section; the county treasurer within fifteen days after the receipt of such revenue from the state treasurer shall allocate and remit to each political subdivision its proportionate amount of that revenue.

If the classification of any property for taxation purposes is changed from real to personal property or from personal to real property because of legislative or judicial action, the county auditor of the county in which the property is located shall forthwith certify to the tax commissioner the

amount of real estate taxes or personal property taxes that was levied on all such property by each taxing district in the year 1968 and in any other year thereafter that the tax commissioner may request. The tax commissioner, in determining the amount to be certified to the state treasurer for payment to the county pursuant to this section, shall adjust the amounts of taxes certified by the county auditor as levied on real property and on personal property in 1968 and in any other year as may be necessary by adding to or subtracting from each such amount the taxes on the reclassified property so that the distribution by the state to the county will be determined as though such property had been taxed in 1968 and all later years in the classification into which it was reclassified.

Notwithstanding the other provisions of this section, personal property tax replacement is an amount as determined under section 57-39.2-26.1, subject to legislative appropriation. If moneys appropriated by the legislative assembly for personal property tax replacement are not in the amount that would be provided under this section for distribution, the tax commissioner and the state treasurer shall provide for pro rata distribution of available funds on the basis of the formula contained in this section.

SECTION 3. STATEMENT OF INTENT. It is the intent of the legislative assembly that the lesser of five percent of the distributions to each political subdivision for revenue sharing and personal property tax replacement or the amount distributed to each political subdivision from the total appropriated in excess of its share of fifty-seven percent of an equivalent of one percent of the sales, use, and excise tax; or so much thereof as may be necessary, must be used to complete handicap accessibility projects on property of the political subdivision. The state auditor must include or require a statement of compliance with this section in each political subdivision's audit report.

SECTION 4. STATEMENT OF INTENT. It is the intent of the legislative assembly that, if the amount appropriated in this Act is less than the amount deposited in the state aid distribution during the 1989-91 biennium, the legislative assembly shall provide a deficiency appropriation of the excess amount deposited and that the deficiency appropriation be for the 1989-91 biennium, and not be considered in appropriations for the 1991-93 biennium.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 18

HOUSE BILL NO. 1019
(Committee on Appropriations)

CENTENNIAL COMMISSION

AN ACT making an appropriation for defraying the expenses of the centennial commission of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$189,540, or so much thereof as may be necessary, to the centennial commission of the state of North Dakota for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 19

HOUSE BILL NO. 1020
(Committee on Appropriations)

AGRICULTURAL COUNCILS AND COMMISSIONS

AN ACT making an appropriation for defraying the expenses of various agricultural councils and commissions of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated from special funds derived from federal funds and other income, to the various agricultural councils and commissions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.

EDIBLE BEAN COUNCIL

Operating expenses	\$ 400,000
Total appropriation from edible bean fund	\$ 400,000

Subdivision 2.

SUNFLOWER COUNCIL

Salaries and wages	\$ 55,810
Operating expenses	1,442,585
Equipment	7,000
Total appropriation from sunflower fund	\$1,505,395

Subdivision 3.

HONEY PROMOTION FUND

Operating expenses	\$ 56,000
Total appropriation from honey promotion fund	\$ 56,000

Subdivision 4.

STATE POTATO COUNCIL

Operating expenses	\$1,000,000
Total appropriation from spud fund	\$1,000,000

Subdivision 5.

TURKEY FUND

Operating expenses	\$ 40,000
Total appropriation from turkey promotion fund	\$ 40,000

Subdivision 6.

STATE WHEAT COMMISSION

Salaries and wages	\$ 633,907
Data processing	6,480
Operating expenses	2,515,855
Equipment	<u>20,000</u>

Total appropriation from wheat promotion fund	\$3,176,242
Grand total special funds appropriation H.B. 1020	\$6,177,637

SECTION 2. APPROPRIATION. In addition to the appropriations provided in section 1 of this Act, all funds as may be on deposit in the various special funds for which appropriations are made in section 1 are hereby appropriated and can be spent only upon authorization of the emergency commission for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved April 28, 1989
 Filed April 28, 1989

CHAPTER 20

HOUSE BILL NO. 1021
(Committee on Appropriations)

STATE SEED DEPARTMENT

AN ACT to make an appropriation for defraying the expenses of the state seed department of the state of North Dakota; and to amend and reenact section 4-09-20 of the North Dakota Century Code, relating to investments of moneys in the state seed department revolving fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys from special funds derived from income, to the state seed department of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$2,483,058
Operating expenses	753,251
Equipment	41,765
Capital improvements	34,000
Grants, benefits, and claims	80,000
Contingency	100,000
Total appropriation from seed department fund	\$3,492,074

* SECTION 2. AMENDMENT. Section 4-09-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-20. Fees and collections - Disposition. All moneys arising from the collection of fees and other charges under ~~the provisions of~~ this chapter must be deposited by the ~~state seed~~ commissioner with the state treasurer and credited to the seed department revolving fund, and must be disbursed, within the limits of legislative appropriations ~~therefrom~~, upon vouchers signed by the ~~state seed~~ commissioner and warrant-checks prepared by the office of management and budget; after approval of such expenditures by the office of the budget. The state treasurer shall, at the direction of the commission, provide for the investment of available moneys from the revolving fund. The state treasurer shall deposit twenty percent of the income from the investment of the moneys in the general fund and the remaining eighty percent of the investment income in the seed department revolving fund.

Approved April 15, 1989
Filed April 17, 1989

* NOTE: Section 4-09-20 was also amended by section 14 of Senate Bill No. 2111, chapter 75.

CHAPTER 21

HOUSE BILL NO. 1022
(Committee on Appropriations)

GAME AND FISH DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the game and fish department of the state of North Dakota; to amend and reenact subsection 22 of section 20.1-03-12 of the North Dakota Century Code, relating to motorboat license fees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the game and fish department of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$ 7,455,630
Data processing	256,958
Operating expenses	4,410,490
Equipment	564,710
Capital improvements	3,077,393
Grants, benefits, and claims	2,124,625
Noxious weed control	144,595
Deer depredation	1,100,000
Wildlife habitat	775,000
In lieu of taxes	400,000
Game and fish donations	60,000
Upland game bird stocking	75,000
Nongame fund	100,000
Total special funds appropriation	\$20,544,401

SECTION 2. HABITAT RESTORATION - TRANSFER. The amount of \$775,000, or such lesser amount as may be available, for the line item entitled wildlife habitat in section 1 of this Act shall be transferred from the habitat restoration stamp program fund, to the game and fish department to lease privately owned lands for wildlife habitat to reestablish wildlife population for the biennium beginning July 1, 1989, and ending June 30, 1991. These funds shall be spent only for the purposes and utilizing guidelines as outlined in section 20.1-03-12.1.

SECTION 3. PRIVATE HABITAT AND DEER DEPREDATION - TRANSFER. The amount of \$1,100,000, or such lesser amount as may be available, for the line item entitled deer depredation in section 1 of this Act, shall be transferred from the private land habitat improvement fund, to the game and fish department, to improve wildlife habitat on private land and alleviate

depredation as provided in section 20.1-02-05 for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 4. NONGAME WILDLIFE - TRANSFER. The amount of \$50,000, or such lesser amount as may be available, for the line item entitled nongame fund in section 1 of this Act, shall be transferred from the nongame wildlife fund to the game and fish department, for the purposes of preservation, inventory, perpetuation, and conservation of nongame wildlife, natural areas, and nature preserves in this state for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 5. AMENDMENT. Subsection 22 of section 20.1-03-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

22. For a motorboat certificate of number and license, the following license fees shall be used: Each motorboat under sixteen feet [4.88 meters] in length, and all canoes, regardless of length, powered by a motor, six nine dollars. Each motorboat sixteen feet [4.88 meters] in length and over but shorter than twenty feet [6.1 meters] in length, excluding canoes, fifteen twenty-one dollars. Each motorboat twenty feet [6.1 meters] in length or over excluding canoes, thirty dollars. It is the intent of the legislative assembly that the increase in motorboat license fees, as provided by the 1981 amendment and 1989 amendments to this subsection, be used for providing matching funds for construction and installation of boat launching facilities, fish cleaning and comfort stations, boating enforcement, boating safety education, and boat registration administration.

SECTION 6. EMERGENCY. The grants, benefits, and claims and the capital improvements line items contained in section 1 of this Act are declared to be emergency measures.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 22

HOUSE BILL NO. 1023
(Committee on Appropriations)

PARKS AND RECREATION DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the parks and recreation department of the state of North Dakota and providing for a transfer from the snowmobile fund and the trail tax transfer fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the parks and recreation department of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$3,429,158
Data processing	3,947
Operating expenses	1,980,257
Equipment	286,682
Capital improvements	502,281
Grants, benefits, and claims	3,319,388
Total all funds	\$9,521,713
Less estimated income	4,883,247
Total general fund appropriation	\$4,638,466

SECTION 2. CAPITAL IMPROVEMENTS AND GRANTS, BENEFITS, AND CLAIMS. It is intended that the appropriation for capital improvements be expended at the discretion of the parks and recreation department and that the appropriation for grants, benefits, and claims be expended at the discretion of the parks and recreation department and the state outdoor recreation interagency council.

SECTION 3. APPROPRIATION - TRANSFER. The amount of \$100,000, or so much thereof as is necessary, included in the estimated income line item, is hereby appropriated and shall be transferred by the office of management and budget from the snowmobile fund to the parks and recreation department for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 4. APPROPRIATION - TRANSFER. The amount of \$11,000, or so much thereof as is necessary, included in the estimated income line item, is hereby appropriated and shall be transferred by the office of management and budget from the trail tax transfer fund to the parks and recreation department for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 23

HOUSE BILL NO. 1024
(Committee on Appropriations)

WATER COMMISSION

AN ACT making an appropriation for defraying the expenses of the various divisions of the state water commission of the state of North Dakota; and providing for an appropriation and transfer of funds from the resources trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the various divisions of the state water commission of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.

STATE WATER COMMISSION

Salaries and wages	\$ 5,004,844
Data processing	62,400
Operating expenses	1,126,799
Equipment	217,530
Grants, benefits, and claims	4,802,879
Total all funds	<u>\$11,214,452</u>
Less estimated income	<u>7,302,102</u>
Total general fund appropriation	\$ 3,912,350

Subdivision 2.

SOUTHWEST WATER PIPELINE

Salaries and wages	\$ 505,103
Operating expenses	2,014,711
Equipment	210,000
Capital improvements	25,061,590
Total special funds appropriation	<u>\$27,791,404</u>
Grand total general fund appropriation H.B. 1024	\$ 3,912,350
Grand total special funds appropriation H.B. 1024	\$37,793,506
Grand total all funds appropriation H.B. 1024	\$41,705,856

SECTION 2. APPROPRIATION - TRANSFER. The amount of \$6,861,190, or so much thereof as is necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act is hereby appropriated and shall be transferred by the office of management and budget from the resources trust fund to the state water commission for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 3. APPROPRIATION - TRANSFER. The amount of \$1,800,000, or so much thereof as is necessary, included in the special funds appropriation line item in subdivision 2 of section 1 of this Act is hereby appropriated and shall be transferred by the office of management and budget from the resources trust fund to the southwest water pipeline under the supervision of the state water commission for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 4. ALLOCATION OF GRANT FUNDS. The funds appropriated in the grants line item in subdivision 1 of section 1 shall be disbursed by the commission in accordance with section 61-02-64.1.

SECTION 5. GRANTS, BENEFITS, AND CLAIMS. Section 54-44.1-11 of the North Dakota Century Code shall not apply to appropriations made for grants, benefits, and claims in this Act. However, this exclusion shall only be in effect for the two-year period after June 30, 1991. Any unexpended funds after that period has elapsed shall be transferred to the resources trust fund.

SECTION 6. RESOURCES TRUST FUND APPROPRIATION - ADJUSTMENT. In the event the resources trust fund estimated 1989-91 revenues are in excess of \$5,854,410, any excess, up to \$2,700,000 or so much thereof as is necessary, is hereby appropriated and, subject to emergency commission approval, shall be transferred by the office of management and budget from the resources trust fund to the state water commission for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 24

HOUSE BILL NO. 1025
(Committee on Appropriations)

ECONOMIC DEVELOPMENT COMMISSION

AN ACT to make an appropriation for defraying the expenses of the economic development commission of the state of North Dakota; to provide for a transfer from the state highway fund; to provide legislative intent regarding economic development; and to amend and reenact sections 54-34-01, 54-34-03, and subsection 2 of section 54-34-06 of the North Dakota Century Code, relating to the purpose and membership of the economic development commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the economic development commission of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$2,258,489
Data processing	2,500
Operating expenses	3,755,761
Equipment	39,668
Grants, benefits, and claims	2,105,425
Total all funds	\$8,161,843
Less estimated income	2,651,628
Total general fund appropriation	\$5,510,215

SECTION 2. TRANSFER. The amount of \$1,801,628 included in the estimated income line item in section 1 of this Act shall be transferred from the state highway fund to the economic development commission operating fund as directed by the office of management and budget during the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 3. AMENDMENT. Section 54-34-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34-01. Purpose of chapter. The economic development commission and director of the economic development commission appointed under this chapter are intended to carry out a program of promotion and economic development to enhance the general welfare of the state through the establishment of new business and industry, the expansion of existing business and industry, the development of new markets for agricultural, and other products, the encouragement of international trade, the development of tourism, and the attraction of new residents, business, and industry. The primary mission and

focus of the program is the establishment and expansion of primary sector business and industry.

SECTION 4. AMENDMENT. Section 54-34-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-34-03. Economic development commission - Membership - Appointment and removal - Expenses. The economic development commission consists of the governor as chairman and ~~nine~~ ten members appointed by the governor, with one member appointed from each of the eight planning districts ~~and~~, one member to ~~be~~ appointed at large to represent minorities, and one member appointed to represent the state's system of higher education. The members must be appointed for a term of five years staggered so that the term of at least one member expires each year. The governor shall fill vacancies in the same manner as the original appointment, except that vacancies occurring for other than the expiration of a term must be filled by appointment for only the remainder of the term of the member causing the vacancy. The governor shall appoint members to the commission on the basis of the special knowledge, experience, and interest of each member in the economic development of the state. The governor may receive nominations of candidates for appointment to the commission from the private sector and from public and private economic development agencies and organizations in the state in such form as may be required by the governor, including nominations from the state board of higher education for appointment of the member to represent the state's system of higher education. Any member of the commission may be removed by the governor for neglect of duty or malfeasance in office. Members of the commission may not receive a salary for their services, but are entitled to reimbursement for expenses incurred in attending meetings and otherwise performing official duties at the same rate as allowed other state officers.

SECTION 5. AMENDMENT. Subsection 2 of section 54-34-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Plan, execute, and direct a program of publicity, research, and agricultural and industrial promotion, the primary mission and focus of which is the establishment and expansion of primary sector business and industry, which will:
 - a. Attract investors, investment capital, and new residents.
 - b. Foster and promote tourism and international trade.
 - c. Assist in improving the business and agricultural climate of North Dakota to encourage the growth and development of business and industry.

SECTION 6. LEGISLATIVE INTENT - COLLOCATION OF ECONOMIC DEVELOPMENT FUNCTIONS. It is the intent of the legislative assembly that if the North Dakota state university extension division develops area resource centers, the economic development commission, where practical and feasible, collocate the small business development centers and regional economic development council offices, or their equivalent, with the extension division's area resource centers.

SECTION 7. LEGISLATIVE INTENT - GRANTS, BENEFITS, AND CLAIMS. It is the intent of the legislative assembly that \$1,709,737 of the grants,

benefits, and claims line item be made available to the North Dakota equity development corporation established by Senate Bill No. 2234 to be allocated as follows:

GRANT RECIPIENT	AMOUNT
1. University of North Dakota aerospace center	\$ 600,000
2. Center for innovation and business development at the university of North Dakota	169,737
3. University of North Dakota energy and mineral research center for energy research including mild gasification and other research in Bismarck, Mandan, and western North Dakota, conducted with the approval of the lignite research council, established by the governor's executive order dated February 9, 1989	200,000
4. Economic development management committee for university functions necessary to bring technological innovations and product discoveries to commercialization	200,000
5. Small business innovation research	100,000
6. Equity development corporation in accordance with the provisions of Senate Bill No. 2234	<u>440,000</u>
Total	\$ 1,709,737

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 25

HOUSE BILL NO. 1063
(Legislative Council)
(Interim Legislative Procedure and Arrangements Committee)

LEGISLATIVE WING AND CAPITOL GROUNDS PLANNING COMMISSION

AN ACT providing an appropriation to the legislative assembly for improvements to the state capitol; providing an appropriation to the capitol grounds planning commission for defraying expenses; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the capitol building fund in the state treasury, not otherwise appropriated, the sum of \$422,300, or so much thereof as may be necessary, to the legislative assembly for improvements to the legislative wing and capitol grounds of the state capitol and the sum of \$25,000, or so much thereof as may be necessary, to the capitol grounds planning commission to defray its expenses. The legislative council or its designee shall administer this Act. The provisions of chapter 48-10 and section 54-44.1-11 do not apply to this appropriation.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 26

HOUSE BILL NO. 1080
(Committee on Finance and Taxation)
(At the request of the Board of Higher Education)

BISMARCK STATE COLLEGE PARKING BONDS

AN ACT to authorize the state board of higher education to issue and sell self-liquidating tax-exempt bonds for the construction of a revenue-producing parking lot at Bismarck state college; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BOARD OF HIGHER EDUCATION - BOND ISSUANCE - PURPOSES. The state board of higher education, in accordance with chapter 15-55, is hereby authorized to issue and sell self-liquidating tax-exempt bonds in any amount up to, but not exceeding, \$350,000, for the purpose of constructing a revenue-producing parking lot at Bismarck state college. Bonds issued under the provisions of this Act may not become a general obligation of the state of North Dakota.

SECTION 2. USE OF PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 1, or so much thereof as may be necessary, plus any available funds received from federal or private sources, are hereby appropriated for the construction and equipment of the facility authorized in section 1. Any unexpended balance from the sale of bonds must be placed in sinking funds for the retirement of the authorized bonds.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved January 31, 1989
Filed January 31, 1989

CHAPTER 27

HOUSE BILL NO. 1456
(Representatives Rydell, Hokana)
(Senators Mushik, Holmberg)

CENTENNIAL TREE PROGRAM

AN ACT to allow the centennial commission to establish a centennial decade trees committee by rule, to establish a centennial tree program trust fund, and to provide for uses of the fund; to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to an optional contribution to the centennial tree program trust fund to be included on North Dakota income tax returns; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Centennial decade trees committee - Centennial tree program trust fund - Uses - Appropriation. The centennial commission may adopt rules to provide for establishment, membership, functions, powers, duties, and duration of a centennial decade trees committee. A special fund is established in the state treasury known as the centennial tree program trust fund. The fund may be expended by the centennial decade trees committee and is hereby appropriated to the committee as a standing and continuing appropriation that may be used only for the purposes of defraying the costs associated with the ongoing promotion of the centennial trees program.

SECTION 2. A new section to chapter 57-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

Optional contributions to centennial tree program trust fund. On all tax returns under this chapter, a taxpayer may designate a contribution to the centennial tree program trust fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that would otherwise be payable by or to the taxpayer. The tax commissioner shall notify taxpayers of this optional contribution on all state income tax returns. The tax commissioner shall transfer the amount of optional contributions under this section to the state treasurer for deposit in the centennial tree program trust fund for use as provided in section 1 of this Act.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable years beginning after December 31, 1988, and is ineffective for taxable years beginning after December 31, 1998.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 28

HOUSE BILL NO. 1601
(Peterson, Mertens, R. Hausauer, Kelly)

BLUE BOOK CENTENNIAL EDITION

AN ACT to provide a continuing appropriation for the North Dakota centennial edition of the blue book; to amend and reenact subsection 5 of section 20 of chapter 70 of the 1987 Session Laws of North Dakota, relating to the sale of the blue book; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. NORTH DAKOTA CENTENNIAL EDITION OF THE BLUE BOOK - CONTINUING APPROPRIATION. The secretary of state shall deposit all fees and moneys collected from the sale of the blue book in the state treasury in a special fund known as the blue book fund. The moneys in the fund are hereby appropriated as a continuing appropriation to the secretary of state for the continued printing and distribution of the centennial edition of the blue book. The secretary of state may order additional blue books only as the continuing appropriation will allow.

SECTION 2. AMENDMENT. Subsection 5 of section 20 of chapter 70 of the 1987 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

5. After making the distribution required by subsection 4, the secretary of state shall provide for the sale of the Blue Book through state agencies and may negotiate with North Dakota licensed private vendors and state agencies to allow for sales at various locations throughout the state. The secretary of state shall establish the price of the Blue Book. ~~All proceeds received by the state must be deposited in the state general fund.~~

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 29

HOUSE BILL NO. 1669
(Representatives Schneider, Goetz, Rydell)
(Senators Mushik, Satrom, Thane)
(Approved by the Committee on Delayed Bills)

PENITENTIARY BUILDING AND HIGHER EDUCATION HANDICAPPED ACCESS

AN ACT to authorize the industrial commission acting as the North Dakota building authority to issue loan notes to make funds available for the construction of various buildings and facilities at the North Dakota state penitentiary and for handicapped access projects at the institutions of higher education under the control of the board of higher education; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. PROJECT AUTHORIZATION - APPROPRIATION. The industrial commission, acting as the state building authority, may construct and acquire and issue loan notes pursuant to chapter 54-17.2 of the North Dakota Century Code in an amount not exceeding \$6,200,000, less any insurance proceeds received for the building and equipment losses from the February 17, 1989, fire estimated at approximately \$1,200,000, to defray that portion of the project costs associated with the phase III construction and renovation project at the North Dakota state penitentiary, hereby declared to be in the public interest, during the period beginning January 1, 1989, and ending June 30, 1991. The industrial commission may offer loan notes issued under this section for sale only to the Bank of North Dakota at a price that is as representative as possible of the current market interest rates for comparable loan notes purchased by the Bank of North Dakota. The proceeds of the loan notes and other available funds are hereby appropriated for the construction of various buildings and facilities at the North Dakota state penitentiary for the period beginning on the effective date of this Act and ending June 30, 1991. The industrial commission shall issue loan notes authorized under this section with the condition that lease rental payments need not begin until July 1, 1991. This authority of the industrial commission to issue loan notes ends on June 30, 1991, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and to comply with any covenants entered into before that date.

SECTION 2. PROJECT AUTHORIZATION - APPROPRIATION. The industrial commission, acting as the state building authority, may construct and acquire and issue loan notes pursuant to chapter 54-17.2 of the North Dakota Century Code in an amount not exceeding \$1,600,000 to defray that portion of the project costs associated with selected handicapped access projects at the institutions of higher education under the control of the board of higher education, hereby declared to be in the public interest, for the biennium beginning July 1, 1989, and ending June 30, 1991. The industrial commission may offer loan notes issued under this section for sale only to the Bank of North Dakota at a price that is as representative as possible of the current

market interest rates for comparable loan notes purchased by the Bank of North Dakota. The proceeds of the loan notes and other available funds are hereby appropriated for the handicapped access projects at the institutions of higher education under the control of the board of higher education for the biennium beginning July 1, 1989, and ending June 30, 1991. The industrial commission shall issue loan notes authorized under this section with the condition that lease rental payments need not begin until July 1, 1991. This authority of the industrial commission to issue loan notes ends on June 30, 1991, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and to comply with any covenants entered into before that date.

SECTION 3. ARCHITECT, ENGINEER, AND LAND SURVEYING SERVICES. The project authorized by section 1 of this Act is not subject to chapter 54-44.7.

SECTION 4. EMERGENCY. Sections 1 and 3 of this Act are declared to be emergency measures.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 30

SENATE BILL NO. 2001
(Committee on Appropriations)

LEGISLATIVE BRANCH

AN ACT providing an appropriation for defraying the expenses of the legislative branch of government; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION FOR THE LEGISLATIVE BRANCH OF STATE GOVERNMENT. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the legislative branch of the state government for the purpose of defraying the expenses thereof, for the fiscal period beginning with the effective date of this Act and ending June 30, 1991, as follows:

Subdivision 1.

FIFTY-FIRST AND FIFTY-SECOND LEGISLATIVE ASSEMBLIES AND BIENNIUM	
Salaries and wages	\$3,814,427
Operating expenses	1,662,171
Equipment	32,640
National conference of state legislatures	101,828
Total general fund appropriation	\$5,611,066

Subdivision 2.

LEGISLATIVE COUNCIL

Salaries and wages	\$2,492,459
Operating expenses	1,438,243
Equipment	11,420
Total general fund appropriation	\$3,942,122
Grand total general fund appropriation	\$9,553,188

SECTION 2. TRANSFERS. The director of the office of management and budget and the state treasurer shall make such transfers of funds between line items of appropriations for the legislative council as may be requested by the chairman of the council or his designee upon the finding by the chairman or his designee that the nature of studies and duties assigned to the council requires such transfers in properly carrying on the council's functions and duties. The director of the office of management and budget and the state treasurer shall similarly make transfers of funds between the line items for the fifty-first and fifty-second legislative assemblies, upon request of the chairman of the legislative council or his designee upon the finding by the chairman or his designee that such transfers are required for the legislative assembly to carry on its functions and duties.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 31

SENATE BILL NO. 2002
(Committee on Appropriations)

JUDICIAL BRANCH

AN ACT to provide an appropriation for defraying the expenses of the judicial branch of the government of the state of North Dakota; and to amend and reenact sections 27-02-02, 27-05-03, 27-07.1-04, and 27-24-04 of the North Dakota Century Code, relating to the salaries of the judges of the supreme, district, and county courts and reimbursement for temporary judge appointments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the judicial branch of government of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.

SUPREME COURT

Salaries and wages	\$ 3,922,383
Data processing	102,500
Operating expenses	1,015,500
Equipment	84,000
Judges retirement	279,225
Court of appeals	42,000
Total all funds	\$ 5,445,608
Less estimated income	213,300
Total general fund appropriation	\$ 5,232,308

Subdivision 2.

DISTRICT COURTS

Salaries and wages	\$12,330,613
Operating expenses	3,951,961
Equipment	106,975
Judges retirement	783,991
Total all funds	\$17,173,540
Less estimated income	142,332
Total general fund appropriation	\$17,031,208

Subdivision 3.

JUDICIAL CONDUCT COMMISSION AND DISCIPLINARY BOARD

Salaries and wages	\$ 176,582
Operating expenses	118,500
Equipment	2,000

Total all funds	\$ 297,082
Less estimated income	60,000
Total general fund appropriation	\$ 237,082
Grand total general fund appropriation S.B. 2002	\$22,500,598
Grand total special funds appropriation S.B. 2002	\$ 415,632
Grand total all funds appropriation S.B. 2002	\$22,916,230

SECTION 2. APPROPRIATION. There is hereby appropriated any funds received by the judicial conduct commission and disciplinary board, not otherwise appropriated, pursuant to federal acts and private gifts, grants and donations for the purpose as designated in such federal acts or private gifts, grants, and donations for the period beginning July 1, 1989, and ending June 30, 1991.

SECTION 3. TRANSFERS. The director of the office of management and budget and the state treasurer shall make such transfers of funds between line items of appropriation for the judicial branch of government as may be requested by the supreme court upon a finding by the court that the nature of the duties of the court and its staff requires such transfers to carry on properly the functions of the judicial branch of government.

SECTION 4. AMENDMENT. Section 27-02-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-02-02. Salaries of judges of supreme court. Each judge of the supreme court shall receive an annual salary commencing July 1, ~~1985~~ 1989, of ~~fifty-six thousand eight hundred sixty-five~~ sixty-three thousand eight hundred seventy-one dollars except that the chief justice of the supreme court shall receive an additional one thousand ~~five hundred eighty-two~~ seven hundred seventy-seven dollars per annum and commencing on July 1, ~~1986~~ 1990, each judge of the supreme court shall receive an annual salary of ~~fifty-nine thousand one hundred forty~~ sixty-eight thousand three hundred forty-two dollars except that the chief justice of the supreme court shall receive an additional one thousand ~~six hundred forty-five~~ nine hundred one dollars per annum.

SECTION 5. AMENDMENT. Section 27-05-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-05-03. Salaries and expenses of district judges. Each district judge of this state shall receive an annual salary commencing July 1, ~~1985~~ 1989, of ~~fifty-three thousand three hundred eighty-three~~ fifty-nine thousand four hundred five dollars and commencing July 1, ~~1986~~, an annual salary of ~~fifty-five thousand five hundred nineteen~~ 1990, an annual salary of sixty-two thousand nine hundred sixty-nine dollars and his actual travel expenses, which shall include mileage and subsistence while engaged in the discharge of his official duties outside the county in which his chambers are located. Such salary and expenses shall be payable monthly in the manner provided by law.

Each district judge who has been appointed by the supreme court to act as presiding judge of a judicial district shall receive an additional one thousand ~~two hundred sixty-six~~ four hundred eight dollars per annum commencing July 1, ~~1985~~, and one thousand three hundred sixteen dollars per annum commencing July 1, ~~1986~~ 1989, and one thousand four hundred ninety-three dollars per annum commencing July 1, 1990.

SECTION 6. AMENDMENT. Section 27-07.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-04. Salaries of judges of county courts - Amount and payment. A county judge is entitled to an annual salary of eighty-five percent of the salary paid to a district court judge as of January 1, 1989, but the county or counties may increase that amount up to the same salary as a district court judge. Such salary shall be payable by the county or counties in equal monthly installments and shall be full remuneration for all official duties, including all fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies. All fees collected for official acts as judge of the county court, except fees charged for performing marriage ceremonies, shall be deposited by the court into the county treasury of the county in which the court is located.

SECTION 7. AMENDMENT. Section 27-24-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-24-04. Compensation and expenses of persons appointed temporary judge - Reimbursement to counties.

1. A temporary judge appointed as provided in section 27-24-01 ~~shall~~ must receive as compensation for each day of service in the performance of duties under the appointment an amount equal to five percent of the gross monthly salary of a regularly elected or appointed judge of the court in which the temporary judge is to serve, or one-half of that daily compensation for services of one-half day or less. The compensation ~~shall~~ must be paid upon the certificate of the temporary judge that the services were performed for the number of days shown in the certificate, and ~~shall~~ must be paid in the same manner as the salaries of the regularly elected or appointed judges are paid.
2. A temporary judge appointed as provided in section 27-24-01 or assigned as provided in section 27-24-02 to serve outside the county in which the judge resides or maintains an office ~~shall~~ must receive, in addition to daily compensation, reimbursement for travel expenses necessarily incurred in the performance of duties as temporary judge. The expenses ~~shall~~ must be reimbursed upon the certification by the temporary judge that the expenses were actually incurred, in the same manner as like expenses of regularly elected or appointed judges are paid.
3. The state shall reimburse on a pro rata basis the county or counties for whom a county judge provides judicial services the salary paid to the judge by the county or counties during the period the county judge serves as temporary judge in a district court following appointment under section 27-24-01.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 32

SENATE BILL NO. 2003
(Committee on Appropriations)

STATE BOARD OF HIGHER EDUCATION

AN ACT to provide an appropriation for defraying the expenses of the state board of higher education and the various institutions of higher learning under the supervision of the state board of higher education; to authorize the state board of higher education to issue and sell self-liquidating, tax-exempt bonds for the remodeling and/or expansion of the student union at Minot state university; to amend and reenact section 4-19-03 of the North Dakota Century Code, relating to the state forester's authority to charge for seeds and planting stock; to provide an exemption to the provisions of section 54-44.1-11 of the North Dakota Century Code; to provide legislative intent regarding student financial assistance grants, higher education planning, telecommunications, membership in the university center for atmospheric research, and the plant improvement contingency fund; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the state board of higher education and to the various institutions of higher learning under the supervision of the state board of higher education for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.

STATE BOARD OF HIGHER EDUCATION

Salaries and wages	\$ 1,016,859
Data processing	49,175
Operating expenses	308,872
Equipment	6,000
Telecommunications	700,000
Higher education planning	300,000
Higher education contingency fund	195,847
Reciprocal agreements	2,271,900
Experimental program to stimulate competitive research	2,538,611
Scholars program	485,476
National direct student loans	102,885
Title II grant	269,561
Paul Douglas scholarship	99,420
Student financial assistance grants	1,500,000
Total all funds	\$ 9,844,606
Less estimated income	2,068,981
Total general fund appropriation	\$ 7,775,625

Subdivision 2.

BISMARCK STATE COLLEGE

Salaries and wages	\$ 11,192,914
Operating expenses	2,954,700
Equipment	506,214
Critical area adjustment fund	122,701
Capital improvements	401,050
Total all funds	\$ 15,177,579
Less estimated income	7,448,610
Total general fund appropriation	\$ 7,728,969

Subdivision 3.

UNIVERSITY OF NORTH DAKOTA - LAKE REGION

Salaries and wages	\$ 3,222,454
Operating expenses	1,158,058
Equipment	115,587
Critical area adjustment fund	27,317
Capital improvements	407,204
Total all funds	\$ 4,930,620
Less estimated income	2,216,938
Total general fund appropriation	\$ 2,713,682

Subdivision 4.

UNIVERSITY OF NORTH DAKOTA - WILLISTON

Salaries and wages	\$ 3,538,446
Operating expenses	1,095,980
Equipment	140,310
Critical area adjustment fund	29,403
Capital improvements	71,560
Total all funds	\$ 4,875,699
Less estimated income	2,208,762
Total general fund appropriation	\$ 2,666,937

Subdivision 5.

UNIVERSITY OF NORTH DAKOTA

Salaries and wages	\$ 78,624,293
Operating expenses	23,376,664
Equipment	2,000,028
Critical area adjustment fund	834,640
Capital improvements	1,487,641
Total all funds	\$106,323,266
Less estimated income	35,041,608
Total general fund appropriation	\$ 71,281,658

Subdivision 6.

NORTH DAKOTA STATE UNIVERSITY

Salaries and wages	\$ 65,258,807
Operating expenses	20,414,103
Equipment	2,112,762
Critical area adjustment fund	765,235
Capital improvements	1,241,661
Total all funds	\$ 89,792,568
Less estimated income	28,691,638
Total general fund appropriation	\$ 61,100,930

Subdivision 7.

NORTH DAKOTA STATE COLLEGE OF SCIENCE

Salaries and wages	\$ 18,872,243
Operating expenses	4,916,086
Equipment	1,365,491
Critical area adjustment fund	148,490
Capital improvements	533,809
Total all funds	\$ 25,836,119
Less estimated income	6,051,805
Total general fund appropriation	\$ 19,784,314

Subdivision 8.

DICKINSON STATE UNIVERSITY

Salaries and wages	\$ 9,807,102
Operating expenses	3,008,863
Equipment	274,257
Critical area adjustment fund	71,311
Capital improvements	647,935
Total all funds	\$ 13,809,468
Less estimated income	3,058,882
Total general fund appropriation	\$ 10,750,586

Subdivision 9.

MAYVILLE STATE UNIVERSITY

Salaries and wages	\$ 6,302,736
Operating expenses	2,009,075
Equipment	148,481
Critical area adjustment fund	42,614
Capital improvements	109,844
Total all funds	\$ 8,612,750
Less estimated income	1,996,834
Total general fund appropriation	\$ 6,615,916

Subdivision 10.

MINOT STATE UNIVERSITY

Salaries and wages	\$ 22,113,021
Operating expenses	3,777,971
Equipment	603,382
Critical area adjustment fund	190,588
Capital improvements	295,442
Total all funds	\$ 26,980,404
Less estimated income	7,916,742
Total general fund appropriation	\$ 19,063,662

Subdivision 11.

VALLEY CITY STATE UNIVERSITY

Salaries and wages	\$ 8,525,423
Operating expenses	2,301,958
Equipment	216,814
Critical area adjustment fund	59,743
Capital improvements	208,390
Total all funds	\$ 11,312,328
Less estimated income	2,836,364
Total general fund appropriation	\$ 8,475,964

Subdivision 12.

NORTH DAKOTA STATE UNIVERSITY - BOTTINEAU

Salaries and wages	\$ 3,072,174
--------------------	--------------

Operating expenses	934,523
Equipment	83,110
Critical area adjustment fund	22,900
Capital improvements	48,125
Total all funds	\$ 4,160,832
Less estimated income	1,093,969
Total general fund appropriation	\$ 3,066,863

Subdivision 13.

NORTH DAKOTA STATE UNIVERSITY - STATE TOXICOLOGIST

Salaries and wages	\$ 495,260
Operating expenses	98,165
Equipment	18,000
Total all funds	\$ 611,425
Less estimated income	68,864
Total general fund appropriation	\$ 542,561

Subdivision 14.

NORTH DAKOTA FOREST SERVICE

Salaries and wages	\$ 1,315,678
Operating expenses	329,449
Equipment	52,066
Capital improvements	30,100
Total all funds	\$ 1,727,293
Less estimated income	684,141
Total general fund appropriation	\$ 1,043,152

Subdivision 15.

UNIVERSITY OF NORTH DAKOTA MEDICAL CENTER

Salaries and wages	\$ 38,150,518
Operating expenses	15,024,598
Equipment	1,022,122
Total all funds	\$ 54,197,238
Less estimated income	26,815,992
Total general fund appropriation	\$ 27,381,246

Subdivision 16.

MEDICAL CENTER REHABILITATION HOSPITAL

Salaries and wages	\$ 17,085,267
Operating expenses	6,322,528
Equipment	196,560
Total appropriation from institutional income	\$ 23,604,355
Grand total general fund appropriation S.B. 2003	\$249,992,065
Grand total special funds appropriation S.B. 2003	\$152,654,485
Grand total all funds appropriation S.B. 2003	\$402,646,550

SECTION 2. APPROPRIATION TRANSFER. The higher education contingency fund and plant improvement contingency fund in subdivision 1 of section 1 must be used for the benefit of the institutions and entities in subdivisions 1 through 14 of section 1 as determined by the state board of higher education. The board shall notify the office of management and budget of the allocation of general fund authority from the higher education contingency fund and plant improvement contingency fund, to the various institutions and which line items in the various institutions and entities shall be adjusted.

SECTION 3. APPROPRIATION. There are hereby appropriated any funds received by the board of higher education, not otherwise appropriated, pursuant to federal acts and private grants for the purpose as designated in such federal acts or private grants for the period beginning July 1, 1989, and ending June 30, 1991.

SECTION 4. ADDITIONAL INCOME. Any additional income not required by law to be deposited in operating funds in the state treasury is hereby appropriated. All income in excess of estimated income in the budget appropriated by the legislative assembly to the institutions of higher learning must be deposited in their respective operating funds in the state treasury and is hereby appropriated and can be spent only upon authorization of the emergency commission.

SECTION 5. TRANSFER. The state board of higher education may make such transfers between line items in subdivision 1 of section 1, other than reciprocal agreements, student financial assistance grants and experimental program to stimulate competitive research, as may be necessary and manageable to provide for board or institutional budget requirements. The board shall notify the office of management and budget of each transfer.

SECTION 6. TRANSFERS. Each institution or agency included in subdivisions 2 through 16 of section 1, upon approval of the state board of higher education, may make such transfers between line items in its appropriation as may be determined necessary by the board for operations of the institution or agency. Each institution or agency shall notify the office of management and budget of each transfer.

SECTION 7. LEGISLATIVE INTENT - STUDENT FINANCIAL ASSISTANCE GRANTS. It is the intent of the legislative assembly that the student financial assistance grants line item in subdivision 1 of section 1 be used for students determined to be in substantial need of financial assistance and eligible in accordance with section 15-62.2-01.

SECTION 8. LEGISLATIVE INTENT - PLANT IMPROVEMENT CONTINGENCY FUND. It is the intent of the legislative assembly that the plant improvement contingency line item in subdivision 1 of section 1 be used at the discretion of the state board of higher education for plant improvements at the institutions in subdivisions 2 through 12. It is also the intent of the legislative assembly that the board allocate plant improvement contingency funds to an institution only after the institution has spent all of its own capital improvement appropriation.

SECTION 9. EXEMPTION. The student financial assistance grants and reciprocal agreements appropriations contained in section 1 of chapter 3 of the 1987 Session Laws shall not be subject to the provisions of North Dakota Century Code section 54-44.1-11 and any unexpended funds from these appropriations shall be available for grants during the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 10. LEGISLATIVE INTENT - LINE ITEM TRANSFERS. It is the intent of the legislative assembly that the transfers allowed in Section 6 of this Act include the transfer of funds, if necessary, from the operating expenses line items to the salaries and wages line items for the purpose of maintaining the present level of instructional, academic, and institutional support, student services, and physical plant positions at the institutions during the 1989-91 biennium.

SECTION 11. LEGISLATIVE INTENT - PLANNING. It is the intent of the legislative assembly that the \$300,000 higher education planning line item in subdivision 1 of section 1 be used for developing an alternative plan to the current system of higher education. The Board of Higher Education shall develop a plan which may include constitutional revision that will make optimum use of the financial resources as well as developing the best quality system with these resources. In an attempt to develop the plan the following areas should be studied:

1. Unified academic calendar.
2. Unified university system.
3. Institutional role, scope and mission statements.
4. Joint appointments of faculty members and statewide tenure system.
5. Need for and the cost effectiveness of duplicate program offerings.
6. Telecommunications as a means of service.
7. Reeducation and retraining of the workforce, including a review of the existing delivery system and the development of a comprehensive delivery system for adults and industry education and training.
8. Role of higher education in business, community, and economic development, specifically with regard to research, training, and technology knowledge transfer.

SECTION 12. LEGISLATIVE INTENT - MEMBERSHIP IN THE UNIVERSITY CENTER FOR ATMOSPHERIC RESEARCH. It is the intent of the legislative assembly that the board of higher education take such action as may be necessary for an institution under its control to become a member of the university center for atmospheric research (UCAR) located in Boulder, Colorado. The board shall determine the requirements for center membership, and, if possible, proceed to obtain membership for one institution during the 1989-91 biennium.

SECTION 13. AMENDMENT. Section 4-19-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-19-03. Distribution of seeds and planting stock ~~—Regulations governing.~~ Seeds and planting stock from the state nursery may be distributed by the state forester to citizens and landowners of this state upon payment by them of a price not greater than one hundred ten percent of the cost to the state of production in the case of planting stock or collection in the case of seeds, and the cost of transportation from the nursery, except that planting stock distributed for the specific purpose of ~~live snow fence or~~ highway beautification plantings may be distributed free of charge.

SECTION 14. BOARD OF HIGHER EDUCATION - BOND ISSUANCE - PURPOSES. The state board of higher education, in accordance with chapter 15-55, is hereby authorized to issue and sell self-liquidating, tax-exempt bonds in any amount up to but not exceeding eight hundred fifty thousand dollars for the purpose of remodeling/expanding the student union at Minot state university. Bonds issued under the provisions of this Act shall not become a general obligation of the state of North Dakota.

SECTION 15. USE OF PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 14, or so much thereof as may be necessary, plus any available funds received from federal or private sources, are hereby appropriated for the construction and the equipment of the facility authorized in section 14. Any unexpended balances from the sale of bonds shall be placed in sinking funds for the retirement of the authorized bonds.

SECTION 16. TELECOMMUNICATION/TECHNOLOGY PROGRAMS. The amount included in the telecommunications line item in subdivision 1 of section 1 of this Act or such greater amounts as may become available for telecommunications or technology-related programs shall only be spent and/or distributed after consultation with the North Dakota educational telecommunications council to best coordinate telecommunication programs.

SECTION 17. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 33

SENATE BILL NO. 2004
(Committee on Appropriations)

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

AN ACT making an appropriation for defraying the expenses of the upper great plains transportation institute.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the upper great plains transportation institute for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$ 999,360
Operating expenses	248,357
Equipment	30,650
Grants, benefits, and claims	2,206,108
Total all funds	\$3,484,475
Less estimated income	3,086,340
Total general fund appropriation	\$ 398,135

SECTION 2. ADDITIONAL INCOME - APPROPRIATION. Any additional income including funds from the federal government and gifts and donations from private sources received by the upper great plains transportation institute except as otherwise provided by law, is hereby appropriated for the purpose designated in the gift, grant, or donation.

SECTION 3. TRANSFER AUTHORITY. The state board of higher education is authorized to approve transfer of funds between line items, and shall notify the office of management and budget within ten days following such transfer.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 34

SENATE BILL NO. 2005
(Committee on Appropriations)

EXTENSION SERVICE AND RESEARCH CENTERS

AN ACT making an appropriation for defraying the expenses of the North Dakota state university extension service, the northern crops institute, and the North Dakota agricultural experiment station; to provide a statement of legislative intent; to provide for a transfer from the lignite research fund; to provide a contingent appropriation; to provide for the investment of the agronomy seed farm reserve income fund; to change the name of the North Dakota state university extension division; to create and enact a new chapter to title 4 of the North Dakota Century Code, relating to the agricultural experiment station and the agricultural research station and centers; to amend and reenact section 4-28-03, subsection 2 of section 15-10-01, sections 15-12-05, 15-12-08, 15-12-17, subdivision c of subsection 16 of section 19-18-02, and section 23-20-04 of the North Dakota Century Code, relating to the name of the agricultural experiment station; and to repeal chapter 4-05 of the North Dakota Century Code, relating to the agricultural experiment stations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the North Dakota state university extension service, the northern crops institute, and the North Dakota agricultural experiment station for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.

NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

Salaries and wages	\$16,538,597
Operating expenses	3,436,102
Equipment	560,000
Total all funds	\$20,534,699
Less estimated income	10,590,411
Total general fund appropriation	\$ 9,944,288

Subdivision 2.

EXTENSION SERVICE
FOOD AND NUTRITION PROGRAM

Salaries and wages	\$ 667,103
Operating expenses	64,167
Equipment	6,000
Total special funds appropriation	\$ 737,270

Subdivision 3.

NORTHERN CROPS INSTITUTE

Salaries and wages	\$ 537,077
Operating expenses	108,780
Equipment	80,000
Total all funds	<u>\$ 725,857</u>
Less estimated income	161,364
Total general fund appropriation	<u>\$ 564,493</u>

Subdivision 4.

NORTH DAKOTA STATE UNIVERSITY MAIN RESEARCH STATION

Salaries and wages	\$29,061,477
Operating expenses	6,169,665
Equipment	1,835,585
Capital improvements	545,000
Animal replacement	300,000
Total all funds	<u>\$37,911,727</u>
Less estimated income	15,935,408
Total general fund appropriation	<u>\$21,976,319</u>

Subdivision 5.

DICKINSON RESEARCH CENTER

Salaries and wages	\$ 755,175
Operating expenses	423,919
Equipment	41,076
Capital improvements	2,000
Total all funds	<u>\$ 1,222,170</u>
Less estimated income	270,990
Total general fund appropriation	<u>\$ 951,180</u>

Subdivision 6.

CENTRAL GRASSLANDS RESEARCH CENTER

Salaries and wages	\$ 372,638
Operating expenses	329,983
Equipment	116,705
Capital improvements	2,000
Total all funds	<u>\$ 821,326</u>
Less estimated income	252,001
Total general fund appropriation	<u>\$ 569,325</u>

Subdivision 7.

HETTINGER RESEARCH CENTER

Salaries and wages	\$ 360,034
Operating expenses	180,309
Equipment	108,463
Capital improvements	2,000
Total all funds	<u>\$ 650,806</u>
Less estimated income	203,245
Total general fund appropriation	<u>\$ 447,561</u>

Subdivision 8.

LANGDON RESEARCH CENTER

Salaries and wages	\$ 381,213
Operating expenses	181,735
Equipment	40,000
Capital improvements	2,000
Total all funds	<u>\$ 604,948</u>

Less estimated income	93,000
Total general fund appropriation	\$ 511,948

Subdivision 9.

NORTH CENTRAL RESEARCH CENTER

Salaries and wages	\$ 396,820
Operating expenses	268,016
Equipment	59,000
Capital improvements	2,000
Total all funds	\$ 725,836
Less estimated income	329,016
Total general fund appropriation	\$ 396,820

Subdivision 10.

WILLISTON RESEARCH CENTER

Salaries and wages	\$ 449,347
Operating expenses	134,905
Equipment	10,122
Capital improvements	2,000
Total all funds	\$ 596,374
Less estimated income	82,002
Total general fund appropriation	\$ 514,372

Subdivision 11.

CARRINGTON RESEARCH CENTER

Salaries and wages	\$ 1,009,529
Operating expenses	603,544
Equipment	137,500
Capital improvements	2,000
Total all funds	\$ 1,752,573
Less estimated income	912,134
Total general fund appropriation	\$ 840,439

Subdivision 12.

AGRONOMY SEED FARM

Salaries and wages	\$ 238,835
Operating expenses	400,930
Equipment	136,000
Capital improvements	27,000
Total special funds appropriation	\$ 802,765

Subdivision 13.

LAND RECLAMATION RESEARCH CENTER

Salaries and wages	\$ 1,400,267
Operating expenses	89,761
Equipment	35,100
Total special funds appropriation	\$ 1,525,128
Grand total general fund appropriation S.B. 2005	\$36,716,745
Grand total special funds appropriation S.B. 2005	\$31,894,734
Grand total all funds appropriation S.B. 2005	\$68,611,479

SECTION 2. ADDITIONAL INCOME - APPROPRIATION. Any additional income including funds from the federal government and gifts and donations from private sources received by the North Dakota agricultural experiment station, northern crops institute, and the North Dakota state university extension service, except as otherwise provided by law, is hereby appropriated for the purpose designated in the gift, grant, or donation. All of the moneys in the

operating fund shall remain in such fund until expended pursuant to any specific legislative appropriation or an authorization from the emergency commission, and the balances of such moneys except those received from the federal government or as gifts from private sources, shall be used to reduce the amount of moneys to be expended pursuant to the general fund appropriation only to the extent that the unencumbered balance in the operating fund on June 30, 1989, exceeds the estimated income for the biennium ending June 30, 1991.

SECTION 3. TRANSFER AUTHORITY. The state board of higher education is authorized to approve transfer of funds between line items for each agency included in section 1 of this Act and shall notify the office of management and budget within ten days following such transfer.

SECTION 4. TRANSFER AUTHORITY. Upon approval of the emergency commission, the director of the North Dakota agricultural experiment station may transfer appropriation authority between agencies included in subdivisions 4 through 13 of section 1 of this Act.

SECTION 5. INTENT. It is the intent of the legislative assembly that the funds appropriated for the land reclamation research center be used for the following research projects:

1. Development of criteria for evaluating reclamation success for bond release based on vegetative reestablishment and soil parameters;
2. Effect of postmine topography on soil moisture levels and crop yields;
3. Effect of reclamation techniques on soil compaction and soil productivity; and
4. Methods of evaluating and controlling run-off and erosion from reclaimed land.

In addition, it is the intent of the legislative assembly that the land reclamation research center file an annual report with the legislative council, the office of management and budget, and the public service commission on August 1, 1989, August 1, 1990, and August 1, 1991. The annual report shall contain a description and analysis of the conclusions reached from each reclamation research project that has been conducted to date for the preceding fiscal year as well as a brief description and analysis of any tentative conclusions reached from all ongoing projects. The annual report of the land reclamation research center shall also include any recommendations it may have for reducing unnecessary and duplicative regulatory costs that do not contribute to effective reclamation practices. For any new reclamation research project to be approved for funding, each proposed project must meet all of the following criteria:

1. Development of data and conclusions that will assist in returning the land to its original or better productivity.
2. Development of data and conclusions that will assist in returning the land to an approved postmining land use as soon as possible.

3. Development of data and conclusions that will reduce unnecessary regulatory costs and assist in effectively reclaiming the land to its original or better productivity.

SECTION 6. STORAGE FACILITIES. Structures for storage of agricultural products may be authorized for construction by the state board of higher education when such structures do not exceed \$50,000 in cost.

SECTION 7. RESEARCH/EXTENSION CONSTRUCTION - APPROPRIATION - BUDGET SECTION APPROVAL. The North Dakota agricultural experiment station is hereby authorized to accept a gift dedicated to the construction of a facility to house research and extension service staff. The facility is to be constructed at or near the station or center headquarters site. The total construction cost shall not exceed \$1,000,000 and such amount, or so much thereof as may be necessary, is hereby appropriated for the biennium beginning July 1, 1989, and ending June 30, 1991. Funds shall not be spent pursuant to this section without the approval of the legislative council's budget section.

SECTION 8. LAND RECLAMATION RESEARCH CENTER - APPROPRIATION - TRANSFER. The amount appropriated in subdivision 13 of section 1 of this Act includes \$827,300, or so much thereof as may be necessary, for the purpose of funding reclamation research projects, and shall be transferred by the industrial commission from the lignite research fund as created by the fiftieth legislative assembly. Such funds shall be transferred at the direction of the office of management and budget from the lignite research fund to the land reclamation research center operating fund for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 9. LEGISLATIVE INTENT - RESOURCE CENTERS - COUNTY SERVICES. It is the intent of the legislative assembly that the North Dakota state university extension service develop a comprehensive plan for the creation of area resource centers. The purpose of the centers will be to provide, not only a greater depth of expertise at a particular location, but also a greater range of expertise for the conduct of multidisciplinary educational programs that focus on the issues and needs of families, businesses, and communities in North Dakota. Without a county's board of county commissioners approval, the extension service shall not change the manner in which it provides extension services to that county.

SECTION 10. DURUM WHEAT MILLER POSITION - AUTHORIZATION. The North Dakota state university main research station is authorized to establish a durum wheat miller position for the 1989-91 biennium. The North Dakota state university main research station may accept gifts and grants which are hereby appropriated to fund this position for the 1989-91 biennium.

SECTION 11. AGRONOMY SEED FARM - INVESTMENT OF RESERVE INCOME FUND. The state treasurer, at the direction of the superintendent of the agronomy seed farm with the approval of the director of the North Dakota agricultural experiment station, shall provide for the investment of available moneys in the agronomy seed farm reserve income fund. The state treasurer shall credit the investment income to the agronomy seed farm reserve income fund. The moneys in the fund may be spent only within the limits of legislative appropriation.

SECTION 12. NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE - AUTHORITY TO CODIFY NAME CHANGE. The legislative council is authorized to

replace, where appropriate, "extension division of the North Dakota state university of agriculture and applied science", "cooperative extension division of the North Dakota state university of agriculture and applied science", "extension division", "cooperative extension service of North Dakota state university", "North Dakota cooperative extension service", "state extension service", "extension service", "cooperative extension service", "state cooperative extension service", and "North Dakota state university of agriculture and applied science extension service" wherever they appear in the North Dakota Century Code or in the supplements to the North Dakota Century Code with "North Dakota state university extension service". The legislative council shall make the changes when any volume or supplement of the North Dakota Century Code is reprinted.

SECTION 13. A new chapter to title 4 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Agricultural experiment station" means the North Dakota state university main research station, the Dickinson research center, the Williston research center, the Langdon research center, the central grasslands research center, the Carrington research center, the Hettinger research center, the north central research center, and any other department or agency designated by the state board of higher education.
2. "Director" means the director of the North Dakota agricultural experiment station.
3. "Superintendent" means an administrator in charge of a research center.

Agricultural experiment station. The North Dakota agricultural experiment station is under the control of and subject to the supervision of the state board of higher education. The agricultural experiment station shall develop research programs involving the basic and applied biological, physical, and social sciences that will enhance agricultural systems and improve the quality of life.

Director - Superintendents - Research station and research centers. The director is under the direction of the president of the North Dakota state university of agriculture and applied science. The research station and research centers of the North Dakota agricultural experiment station are under the jurisdiction of the director. Each research center must be administered by a superintendent who shall report to the director.

Reports to director and state board of higher education. Each superintendent shall submit a biennial report to the director on or before the first day of August of each odd-numbered year. Each report must set forth in detail the investigations and experiments made during the preceding fiscal biennium, recommendations for the welfare of the center, the financial condition of the center, how all moneys have been expended, and the results of experiments. The director shall submit these reports, with a biennial report of the North Dakota state university main research station, to the board of higher education on or before the first day of September of each odd-numbered year. In addition to any requirements established under section 54-06-04, the board of higher education shall include a composite of the

reports from the research station and each research center in its biennial report to the governor and the office of management and budget.

North Dakota state university main research station. The North Dakota state university main research station must be located on the campus of North Dakota state university of agriculture and applied science. The station is the administrative location of the agricultural experiment station. The station shall conduct research and coordinate all research activities of the agricultural experiment station. The research must have as a purpose, the development and dissemination of technology important to the production and utilization of food, feed, fiber, and fuel from crop and livestock enterprises. The research must provide for an enhancement of the quality of life, sustainability of production, and protection of the environment. The research station shall keep detailed records of all research activities and publish the information that will be of value to the residents of this state.

Dickinson research center. The Dickinson research center must be located at or near Dickinson in Stark County. The center shall conduct research on increasing the carrying capacity of native rangeland, with emphasis on conservation and preservation for future generations. The center shall conduct research on grass production to determine how to best compensate for the vagaries of the weather as it influences forage production in the dryland agriculture of western North Dakota. The center shall conduct research at the ranch location in Dunn County with beef cattle and swine breeding, feeding, management, and disease control for the benefit of livestock producers of western North Dakota and the entire state. The center shall conduct research designed to increase productivity of all agricultural products of the soil by maintaining or improving the soil resource base in the dryland agricultural region of southwestern North Dakota by the identification of adapted crop species and superior crop cultivars; propagation and distribution of selected seedstock; and development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources. The center shall disseminate research results and information for the benefit of this state.

Williston research center. The Williston research center must be located at or near Williston in Williams County. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the dryland agricultural region of northwestern North Dakota by the identification of adapted crop species and superior crop cultivars; propagation and distribution of selected seedstocks; and development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources. The center shall disseminate research results and information for the benefit of this state.

Langdon research center. The Langdon research center must be located at or near Langdon in Cavalier County. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the dryland agricultural region of northeastern North Dakota by the identification of adapted crop species and superior crop cultivars; propagation and distribution of selected seedstocks; and development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources. The center shall disseminate research results and information for the benefit of this state.

Central grasslands research center. The central grasslands research center must be located within an area bounded by the Missouri River on the west and the James River on the east. The center shall conduct research designed to fulfill needs within an area bounded by the Missouri River on the west and the James River on the east. Research objectives must be to increase the range-carrying capacity of native range, with emphasis on conservation and preservation for future generations; stabilization of grass production to discover how to best compensate for the vagaries of the weather and precipitation as it influences forage production in a dryland agriculture; identification of the impact of different management systems upon beef production in the central region of the state; and exploration of increased use of crop residues and byproducts for the maintenance of the cowherd.

Carrington research center. The Carrington research center must be located at or near Carrington in Foster County. The center shall conduct research designed to determine the potential of irrigated agriculture in the region proposed for irrigation development in the state which must be related to both crop and livestock production. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the dryland and irrigated agricultural region of east central North Dakota by the identification of adapted crop species and superior crop cultivars; propagation and distribution of selected seedstocks; and development of profitable cropping and integrated crop and livestock systems that achieve the necessary balance between profitability and conservation of all natural resources. The center shall disseminate research results and information for the benefit of this state.

Hettinger research center. The Hettinger research center must be located at or near Hettinger in Adams County. The center shall develop the best available technology in breeding, feeding, management, and disease control pertinent to the production of sheep in the state. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in southwestern North Dakota by the identification of adapted crop species and superior crop cultivars; propagation and distribution of selected seedstocks; and development of profitable cropping systems that achieve the necessary balance between profitability and conservation of all natural resources. The center shall disseminate research results and information for the benefit of this state.

North central research center. The north central research center must be located at or near Minot in Ward County. The center shall conduct research designed to increase productivity of all agricultural products of the soil while maintaining or improving the soil resource base in the dryland agricultural region of north central North Dakota by the identification of adapted crop species and superior crop cultivars; propagation and distribution of selected seedstocks; and development of profitable cropping systems which achieve the necessary balance between profitability and conservation of all natural resources. The center shall disseminate research results and information for the benefit of this state.

Board of visitors - Members - Inspection - Expenses - Duties. The boards of county commissioners of Renville, Bottineau, Rolette, Benson, Ward, McHenry, Pierce, McLean, Mountrail, Sheridan, Burke, and Wells Counties shall name two farmers operating farms in their respective counties to serve as a

board of visitors to the north central research center. A member of the board of visitors shall serve for three years and is not eligible for reappointment until after a lapse of three years following each term of office. The board of county commissioners of the county from which a vacancy occurs shall fill the vacancy. The board of visitors shall make an annual inspection of the north central research center upon call of the director. At least one inspection a biennium must be during the growing season. The board of visitors is entitled to a fee for each visit, plus mileage at the same rate as provided by law for other state officials for every mile [1.61 kilometer] actually traveled to and from the farm. The board of visitors shall inspect the work of the north central research center and counsel and advise with the officials in charge. The board of visitors shall name one of its members to serve as chairman and another to serve as secretary. The chairman and the secretary shall make a written report to the director.

Mandan experiment station. The Mandan experiment station is an agricultural, grass, and tree experiment station. The station must be maintained on the grounds of the state industrial school and operated in connection with the North Dakota state university of agriculture and applied science. The Mandan experiment station is under the direction of the state board of higher education.

SECTION 14. AMENDMENT. Section 4-28-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-28-03. Wheat commission - Members. There is hereby created the North Dakota state wheat commission which consists of seven members. One member must be appointed or elected from each of the districts of the state established by the provisions of this chapter and one member must be appointed or elected from the state at large. Each member, except the member from the state at large, must be a bona fide resident of and a qualified elector in the district he represents, must have farming operations in such district, and must have been actually engaged in the production of wheat and have derived a substantial portion of his income therefrom for at least five years next preceding his appointment or election. The member from the state at large must have similar qualifications except as limited by district lines.

Not more than sixty days prior to expiration of the term of the member from the state at large, a nominating committee consisting of the commissioner of agriculture, the president of the North Dakota crop improvement association, the director of the state North Dakota agricultural experiment station, the director of the North Dakota state university extension service, the president of the North Dakota farm bureau, the president of the North Dakota farmers union, and the president of the North Dakota grain dealers association, or their duly authorized representatives, shall submit to the governor a list of three names and within sixty days after expiration of the term the governor shall appoint, from the nominees so named, the member at large to the commission.

Each member of the commission shall hold office for a term of four years and until his successor has been selected and has qualified except that the commissioners elected and serving from the first and fourth districts shall hold office for terms ending on June 30, 1984; the commissioners elected and serving from the second and fifth districts shall hold office for terms ending on June 30, 1985; and the commissioners elected and serving from the third and sixth districts shall hold office for terms ending on June 30,

1982; and the commissioner appointed and serving as the state at large member shall hold office for a term ending on June 30, 1983. No producer is entitled to serve more than three terms.

At least sixty days prior to the expiration of the term of office of a commissioner representing any district, a meeting of producers must be held in each county in the district for the purpose of electing a county representative. The county agent shall call such meeting by publishing notice in the official newspaper of the county for two successive weeks, the last publication to be not less than five nor more than ten days prior to the meeting. The meeting must be held at a central location within the county and must be called to order by the county agent. Each producer whose name appears as a wheat producer on the list of the county agricultural stabilization committee, if present in person, is entitled to vote. Votes must be canvassed by the county agent and certified by him with the name and post-office address of the elected county representative to the director of the North Dakota state university extension service who shall thereupon, as expeditiously as possible, call a meeting of the county representatives of the district. Notice of such meeting must be sent to each county representative by registered or certified mail not less than five days prior to the meeting which must be held at a central location within the district. At such district meeting, the county representatives shall elect one of their number as the district member of the commission. The ballots at such meeting must be canvassed by the North Dakota state university extension service and the result of election certified to the governor by the director. Additional meetings of county representatives may be called by the state wheat commission for the purpose of promoting its programs. All expenses of all such meetings and elections must be paid from commission funds. County representatives must be reimbursed for expenses necessarily incurred in attending meetings and performing other official duties on the same basis as other state officers. Any vacancy occurring on the commission other than by expiration of term of office must be filled by the county representatives who shall elect one of their number as the district member of the commission for the remainder of the unexpired term. If the vacancy is from the state at large, appointment must be made from three nominations submitted by the nominating committee as in the case of the original appointment.

SECTION 15. AMENDMENT. Subsection 2 of section 15-10-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The North Dakota state university of agriculture and applied science and the agricultural experiment station at Fargo, with their substations or centers.

SECTION 16. AMENDMENT. Section 15-12-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-12-05. Faculty - Annual report to board. The faculty shall make an annual report to the state board of higher education on such date of each year as may be fixed by the board. The report shall show the condition of the school, agricultural experiment station, and farm, and the results of farm experiments, and shall contain such recommendations as the welfare of the institution demands.

SECTION 17. AMENDMENT. Section 15-12-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-12-08. Legislative assent to grant by Congress. The assent of the legislative assembly is hereby given in pursuance of the requirements of section 9 of said Act of Congress, approved March 2, 1887, to the grant of money therein made and to the establishing of an agricultural experiment station in accordance with section 1 of said Act, and assent is hereby given to carrying out the provisions of such Act.

SECTION 18. AMENDMENT. Section 15-12-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-12-17. Publish reports of North Dakota agricultural experiment station. There shall be published from time to time, as bulletins of the North Dakota agricultural experiment station, preliminary reports of such survey, as the work progresses, showing the results of the survey and investigations conducted, together with preliminary maps, showing the areas covered, and these preliminary reports shall be sent gratis to all citizens of North Dakota this state making application.

* SECTION 19. AMENDMENT. Subdivision c of subsection 16 of section 19-18-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. To which reference is made on the label or in literature accompanying the economic poison or device, except when accurate, nonmisleading reference is made to current official publications of the United States department of agriculture or interior, the United States public health service, state agricultural experiment stations or centers, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the fields of economic poisons.

SECTION 20. AMENDMENT. Section 23-20-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-20-04. Registration required. Each manufacturer, processor, and refiner of radioactive isotopes and each hospital, clinic, manufacturing establishment, research or educational institution, agricultural experiment station or center, processing mill, or other institution or place of business or process where radiation is produced or radioactive materials are used, manufactured, processed, packaged, refined, produced, disposed or concentrated shall register with the state department of health and consolidated laboratories. The state mine inspector shall register with the state department of health and consolidated laboratories any mine which is producing or has produced radioactive substances. It shall be the duty of each manager or officer in charge of any institution or establishment concerned with radioactive materials as described herein to make written application to the state health officer for a registration form.

SECTION 21. REPEAL. Chapter 4-05 of the North Dakota Century Code is hereby repealed.

Approved April 28, 1989
Filed April 28, 1989

* NOTE: Section 19-18-02 was also amended by section 1 of Senate Bill No. 2170, chapter 272.

CHAPTER 35

SENATE BILL NO. 2006
(Committee on Appropriations)

DEPARTMENT OF HEALTH AND CONSOLIDATED LABORATORIES

AN ACT making an appropriation for defraying the expenses of the department of health and consolidated laboratory services of the state of North Dakota; to provide for a transfer from the abandoned motor vehicle disposal fund; and to provide legislative intent regarding health vaccination charges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of health and consolidated laboratory services of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$17,580,811
Data processing	335,710
Operating expenses	18,551,049
Equipment	539,417
Capital improvements	500,000
Grants, benefits, and claims	8,717,600
Diabetes control project	50,000
Abandoned motor vehicle	400,000
Rural water	3,000,000
Total all funds	<u>\$49,674,587</u>
Less estimated income	<u>35,712,210</u>
Total general fund appropriation	<u>\$13,962,377</u>

SECTION 2. APPROPRIATION - TRANSFER. The estimated income line item appropriated in section 1 of this Act includes \$400,000 which is hereby appropriated and shall be transferred to the department of health and consolidated laboratories services operating fund from the abandoned motor vehicle disposal fund pursuant to section 39-26-11 for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 3. LEGISLATIVE INTENT - HEALTH VACCINATION CHARGES. It is the intent of the legislative assembly that the department of health and consolidated laboratories adopt rules limiting the charges by private clinics and hospitals for providing vaccinations, with vaccine obtained at no cost from the department, to one-half of the cost incurred by the department in purchasing the vaccine.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 36

SENATE BILL NO. 2007
(Committee on Appropriations)

INDIAN AFFAIRS COMMISSION

AN ACT making an appropriation for defraying the expenses of the Indian affairs commission of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the Indian affairs commission of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$169,099
Operating expenses	38,800
Equipment	550
Native American alcohol and drug abuse education	316,974
Grants, benefits, and claims	168,000
Total general fund appropriation	\$693,423

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 37

SENATE BILL NO. 2008
(Committee on Appropriations)

AERONAUTICS COMMISSION

AN ACT making an appropriation for defraying the expenses of the aeronautics commission of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the aeronautics commission of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$ 368,025
Operating expenses	722,947
Equipment	22,000
Capital improvements	500,000
Grants, benefits, and claims	<u>1,078,021</u>
Total all funds	\$2,690,993
Less estimated income	<u>2,170,062</u>
Total general fund appropriation	\$ 520,931

SECTION 2. APPROPRIATION. Notwithstanding the provisions of chapter 57-43.3, \$100,000 included in the grants line item in section 1 of this Act is hereby available to all North Dakota airports to match federal airport improvement program funds.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 38

SENATE BILL NO. 2009
(Committee on Appropriations)

VETERANS' HOME AND VETERANS' AFFAIRS

AN ACT making an appropriation for defraying the expenses of the veterans' home and the department of veterans' affairs of the state of North Dakota; to provide for a transfer from the state general fund; and to provide for a transfer from the veterans' postwar trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the veterans' home and the department of veterans' affairs of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.

VETERANS' HOME

Salaries and wages	\$1,759,023
Operating expenses	620,392
Special assessments	7,481
Equipment	13,000
Total all funds	<u>\$2,399,896</u>
Less estimated income	<u>1,198,405</u>
Total general fund appropriation	\$1,201,491

Subdivision 2.

VETERANS' AFFAIRS

Salaries and wages	\$ 348,631
Operating expenses	63,965
Equipment	4,074
Total general fund appropriation	<u>\$ 416,670</u>
Grand total general funds appropriated S.B. 2009	\$3,098,161
Grand total special funds appropriated S.B. 2009	\$1,198,405
Grand total all funds appropriated S.B. 2009	\$4,296,566

SECTION 2. APPROPRIATION - TRANSFER. The amount of \$1,480,000 is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, which shall be transferred by the state treasurer to the veterans' postwar trust fund in two equal transfers of \$740,000 each. The first transfer shall be made on July 1, 1989, and the second on July 1, 1990.

SECTION 3. INVESTMENT INCOME - TRANSFER. The estimated income line item appropriated in section 1 of this Act includes, to the extent the funds are made available by the administrative committee on veterans' affairs,

\$274,000 which is the total estimated investment income on the veterans' postwar trust fund for the biennium beginning July 1, 1989, and ending June 30, 1991. Such amounts shall be transferred to the veterans' home operating fund from the veterans' postwar trust fund by the state treasurer as requested by the administrative committee on veterans' affairs for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 39

SENATE BILL NO. 2010
(Committee on Appropriations)

DEPARTMENT OF BANKING AND FINANCIAL
INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of the department of banking and financial institutions of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the financial institutions regulatory fund in the state treasury, not otherwise appropriated, to the department of banking and financial institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$1,671,854
Operating expenses	512,189
Equipment	4,270
Contingency - banking and financial institutions	15,000
Total appropriation from the financial institutions regulatory fund	<u>\$2,203,313</u>

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 40

SENATE BILL NO. 2011
(Committee on Appropriations)

SECURITIES COMMISSIONER

AN ACT making an appropriation for defraying the expenses of the securities commissioner of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the securities commissioner of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$368,088
Operating expenses	54,350
Equipment	<u>2,500</u>
Total general fund appropriation	\$424,938

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 41

SENATE BILL NO. 2012
(Committee on Appropriations)

MILK STABILIZATION BOARD

AN ACT making an appropriation for defraying the expenses of the milk stabilization board of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the milk stabilization fund in the state treasury, not otherwise appropriated, to the milk stabilization board of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$312,036
Operating expenses	145,060
Equipment	2,544
Contingency	5,000
Total appropriation from milk stabilization fund	\$464,640

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 42

SENATE BILL NO. 2013
(Committee on Appropriations)

STATE FAIR

AN ACT making an appropriation for defraying the expenses of the state fair association of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the state fair association of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Capital improvements	\$210,000
Premiums	<u>366,217</u>
Total general fund appropriation	<u>\$576,217</u>

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 43

SENATE BILL NO. 2014
(Committee on Appropriations)

COUNCIL ON THE ARTS

AN ACT making an appropriation for defraying the expenses of the council on the arts of the state of North Dakota; and providing for a transfer of funds from the cultural endowment fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the council on the arts of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$ 284,686
Operating expenses	145,707
Equipment	3,700
Grants, benefits, and claims	1,394,990
Arts endowment contingency	25,000
Total all funds	<u>\$1,854,083</u>
Less estimated income	<u>1,280,374</u>
Total general fund appropriation	\$ 573,709

SECTION 2. APPROPRIATION. All income from the cultural arts endowment fund is hereby appropriated for the furthering of the cultural arts in the state of North Dakota for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 3. ADDITIONAL INCOME. All income of the council on the arts in excess of the estimated income appropriated in section 1 of this Act is hereby appropriated to the council on the arts for the biennium beginning July 1, 1989, and ending January 30, 1991, and may be spent only upon authorization of the emergency commission.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 44

SENATE BILL NO. 2015
(Committee on Appropriations)

HIGHWAY PATROL

AN ACT making an appropriation for defraying the expenses of the highway patrol of the state of North Dakota and providing for a transfer of funds from the state highway fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys not otherwise appropriated, from special funds derived from federal funds and other income, to the highway patrol of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$14,508,025
Data processing	171,645
Operating expenses	3,419,246
Equipment	167,033
Capital improvements	30,000
Total special funds appropriation	<u>\$18,295,949</u>

SECTION 2. APPROPRIATION. Each patrolman of the state highway patrol shall receive from funds appropriated in the salaries and wages line item in section 1 of this Act an amount not to exceed \$120 per month for the biennium beginning July 1, 1989, and ending June 30, 1991. Such payments shall be in lieu of reimbursement for meals and other expenses, except lodging, while in travel status within the state of North Dakota or while at their respective home stations. Such amounts shall be paid without the presentation of receipts or other memoranda at the time and in the same manner as salaries of members of the highway patrol are paid.

SECTION 3. APPROPRIATION - TRANSFER - HIGHWAY FUND. There is hereby appropriated in the special funds line item of section 1 of this Act, the sum of \$17,735,291, or so much thereof as may be necessary, from the state highway fund, to be transferred at the direction of the office of management and budget, for the purpose of defraying the expenses of the highway patrol during the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 45

SENATE BILL NO. 2016
(Committee on Appropriations)

HIGHWAY DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the highway department of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the highway department of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$ 63,903,086
Data processing	2,552,083
Operating expenses	40,162,124
Equipment	15,746,528
Capital improvements	243,226,507
Grants, benefits, and claims	9,627,422
Total all funds	<u>\$375,217,750</u>
Less estimated special funds	<u>375,189,036</u>
Total general fund appropriation	\$ 28,714

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 46

SENATE BILL NO. 2017
(Committee on Appropriations)

MOTOR VEHICLE DEPARTMENT

AN ACT making an appropriation for defraying the expenses of the motor vehicle department of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the motor vehicle registration fund in the state treasury, not otherwise appropriated, to the motor vehicle department of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$2,257,345
Data processing	684,592
Operating expenses	1,278,057
Equipment	95,488
Contingency fund	100,000
License plates and tabs	781,659
Total appropriation from motor vehicle registration fund	<u>\$5,197,141</u>

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 47

SENATE BILL NO. 2018
(Committee on Appropriations)

COMMISSIONER OF UNIVERSITY AND SCHOOL LANDS

AN ACT making an appropriation for defraying the expenses of the commissioner of university and school lands of the state of North Dakota; to provide for a transfer of funds from the resources trust fund; to provide for a contingency loan from the coal trust fund; and to repeal the ANG plant closure contingency line item of section 1 and section 4 of chapter 34 of the 1987 Session Laws of North Dakota, relating to the ANG plant closure contingency loan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from the state lands maintenance fund and other income to the commissioner of university and school lands of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$1,187,680
Data processing	18,150
Operating expenses	489,222
Equipment	43,960
Grants, benefits, and claims	2,100,000
Dakota coal gasification plant closure contingency	5,000,000
Foreclosed properties management	89,000
Contingency fund	50,000
Total all funds	<u>\$8,978,012</u>
Less estimated income	<u>8,844,122</u>
Total general fund appropriation	<u>\$ 133,890</u>

SECTION 2. TRANSFER. Notwithstanding section 57-51.1-07 of the North Dakota Century Code, the amount of \$2,000,000, or so much thereof as may be necessary, included in the grants and estimated income line items in section 1 of this Act is hereby appropriated and shall be transferred from the resources trust fund to the commissioner of university and school lands of the state of North Dakota by the state treasurer at the request of the commissioner of university and school lands for the purpose of providing oil development impact grants for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 3. CONTINGENCY LOAN. The amount of \$5,000,000 appropriated in section 1 of this Act for a Dakota coal gasification plant closure contingency line item shall be made available to the energy development impact office only if the Dakota coal gasification plant closes. If the

Dakota coal gasification plant closes, the board of university and school lands shall lend \$5,000,000 from the coal trust fund, or so much thereof as may be necessary, to the energy development impact office for the purpose of providing grants to political subdivisions which are affected by the plant closure.

SECTION 4. GRANTS. Section 54-44.1-11 of the North Dakota Century Code shall not apply to appropriations made for oil impact grants in section 1 of this Act nor to the appropriation for coal impact grants in section 8 of chapter 729 of the 1987 Session Laws of North Dakota.

SECTION 5. REPEAL. The \$5,000,000 ANG plant closure contingency line item of section 1 and section 4 of chapter 34 of the 1987 Session Laws of North Dakota are hereby repealed.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 48

SENATE BILL NO. 2019
(Committee on Appropriations)

CHILDREN'S SERVICES COORDINATING COMMITTEE

AN ACT making an appropriation for defraying the expenses of the children's services coordinating committee of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the children's services coordinating committee of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$ 176,304
Operating expenses	75,640
Equipment	3,200
Regional Family Boards	<u>2,362,180</u>
Total all funds	\$2,617,324
Less estimated income	<u>2,520,424</u>
Total general fund appropriation	\$ 96,900

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 49

SENATE BILL NO. 2020
(Committee on Appropriations)

INDUSTRIAL COMMISSION

AN ACT making an appropriation for defraying the expenses of the state industrial commission and the agencies under the management of the industrial commission of the state of North Dakota and providing for transfers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys not otherwise appropriated, from special funds derived from federal funds and other income, to the state industrial commission and agencies under its control for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

Salaries and wages	\$ 3,487,883
Data processing	118,162
Operating expenses	1,348,020
Equipment	58,885
Grants, benefits, and claims	1,000,000
Contingency	10,000
Total special funds appropriation	\$ 6,022,950

Subdivision 2.

BANK OF NORTH DAKOTA

Salaries and wages	\$ 9,860,882
Data processing	3,556,708
Operating expenses	5,109,159
Equipment	544,725
Contingency	300,000
Total appropriation from Bank of North Dakota fund	\$19,371,474

Subdivision 3.

MUNICIPAL BOND BANK

Salaries and wages	\$ 198,414
Data processing	10,000
Operating expenses	159,570
Equipment	18,300
Bond bank contingency	50,000
Total appropriation from Bank of North Dakota fund	\$ 436,284

Subdivision 4.

MILL AND ELEVATOR ASSOCIATION

Salaries and wages	\$ 9,692,068
Operating expenses	5,624,469
Emergency fund	500,000
Agriculture promotion	50,000
Export trading company	175,000
Total appropriation from mill and elevator fund	<u>\$16,041,537</u>

Subdivision 5.

HOUSING FINANCE AGENCY

Salaries and wages	\$ 1,943,743
Data processing	62,179
Operating expenses	777,765
Equipment	25,000
Grants, benefits, and claims	31,100,000
HFA contingency	100,000
HFA reserve	1,300,000
Total appropriation from housing finance agency fund	<u>\$35,308,687</u>
Grand total special funds appropriation S.B. 2020	\$79,080,932

SECTION 2. APPROPRIATION. In addition to the amount appropriated to the housing finance agency in subdivision 5 of section 1 of this Act, there is hereby appropriated any additional income from federal or other funds which may become available to the agency for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 3. APPROPRIATION. In addition to the amount appropriated to the industrial commission in subdivision 1 of section 1 of this Act, there is hereby appropriated with the approval of the emergency commission, funds which may become available to the commission from bonds issued under chapters 4-36 and 54-17.2 and section 54-17-25, for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 4. APPROPRIATION - TRANSFER. The amount of \$4,586,963, or so much thereof as is necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act is hereby appropriated from the lands and minerals trust fund and shall be transferred to the industrial commission for the purpose of providing funds for the administration of the industrial commission.

SECTION 5. APPROPRIATION - TRANSFER. The amount of \$1,000,000, or so much thereof as is necessary, included in the grants and special funds appropriation line items in subdivision 1 of section 1 of this Act is hereby appropriated from the lignite research fund and shall be transferred to the industrial commission for the purpose of providing grants for land reclamation research, lignite development research, and marketing of lignite and products derived from lignite.

SECTION 6. TRANSFER. There is hereby authorized the transfer to the industrial commission the sum of \$54,819, or so much thereof as is necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, from the accumulated and undivided profits of the North Dakota mill and elevator association. Such moneys shall be transferred during the biennium beginning July 1, 1989, and ending June 30, 1991, upon order of the industrial commission.

SECTION 7. TRANSFER. There is hereby authorized the transfer to the industrial commission, the sum of \$54,819, or so much thereof as is necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act from the accumulated and undivided profits of the Bank of North Dakota. Such moneys shall be transferred during the biennium beginning July 1, 1989, and ending June 30, 1991, upon order of the industrial commission.

SECTION 8. TRANSFER. There is hereby authorized the transfer to the industrial commission the sum of \$54,819, or so much thereof as is necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act from the housing finance agency fund. Such moneys shall be transferred during the biennium beginning July 1, 1989, and ending June 30, 1991, upon order of the industrial commission.

SECTION 9. TRANSFER. There is hereby authorized the transfer to the general fund in the state treasury, the sum of \$3,500,000 from the accumulated and undivided profits of the North Dakota mill and elevator association. Such moneys shall be transferred during the biennium beginning July 1, 1989, and ending June 30, 1991, upon order of the industrial commission, with one-half of the transfer to be made no later than June 30, 1990.

SECTION 10. TRANSFER. There is hereby authorized the transfer to the general fund in the state treasury, the sum of \$14,000,000 from the accumulated and undivided profits of the Bank of North Dakota. Such moneys shall be transferred during the biennium beginning July 1, 1989, and ending June 30, 1991, upon order of the industrial commission, with one-half of the transfer to be made no later than June 30, 1990.

SECTION 11. APPROPRIATION. In addition to the amount appropriated to the Bank of North Dakota in subdivision 2 of section 1 of this Act, there is hereby appropriated \$1,900,000, or so much thereof as may be necessary, from the Bank's operations or capital reserves for the purpose of acquiring, constructing, and remodeling an office building for the period beginning January 1, 1989, and ending June 30, 1991.

SECTION 12. EMERGENCY. Section 11 of this Act is declared to be an emergency measure.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 50

SENATE BILL NO. 2021
(Committee on Appropriations)

HISTORICAL BOARD

AN ACT making an appropriation for defraying the expenses of the state historical board of the state of North Dakota; and to provide for a transfer from the capitol building fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the state historical board of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.

STATE HISTORICAL BOARD

Salaries and wages	\$3,079,685
Data Processing	21,600
Operating expenses	923,707
Equipment	134,124
Capital improvements	115,825
Grants, benefits, and claims	505,000
Total all funds	\$4,779,941
Less estimated income	1,270,590
Total general fund appropriation	\$3,509,351

Subdivision 2.

INTERNATIONAL PEACE GARDEN

Grants, benefits, and claims	\$ 397,204
Total general fund appropriation	\$ 397,204
Grand total general fund appropriation S.B. 2021	\$3,906,555
Grand total special fund appropriation S.B. 2021	\$1,270,590
Grand total all funds S.B. 2021	\$5,177,145

SECTION 2. APPROPRIATION. The superintendent of the North Dakota state historical board is authorized to offer up to \$50,000 of the operating expenses line item appropriated in section 1 of this Act to the North Dakota humanities council, inc., in expectation of return of the appropriation and matching funds from the national endowment for the humanities. Any such funds that may be received by the superintendent are hereby appropriated, subject to emergency commission approval, to the state historical board for the development of exhibits at the heritage center.

SECTION 3. TRANSFER - CAPITOL BUILDING FUND. The amount of \$70,000, or so much thereof as may be necessary, included in the estimated income line

item in section 1 of this Act, is hereby appropriated and shall be transferred by the office of management and budget at the request of the superintendent of the state historical board from the capitol building fund to the state historical board for the purpose of defraying the cost of the heritage center security system for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 51

SENATE BILL NO. 2022
(Committee on Appropriations)

DEPARTMENT OF CORRECTIONS AND PARDON BOARD

AN ACT making an appropriation for defraying the expenses of the department of corrections and rehabilitation and the pardon board of the state of North Dakota; providing for a transfer from the North Dakota state penitentiary land fund; to amend and reenact sections 12.1-32-12 and 54-16-11.1 of the North Dakota Century Code, relating to penalties and sentencing and emergency commission authority to increase revenues and appropriation authority for intergovernmental service fund agencies; and to repeal section 12.1-32-10 of the North Dakota Century Code, relating to mandatory parole components.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income to the department of corrections and rehabilitation and the pardon board of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Salaries and wages	\$19,403,594
Operating expenses	11,193,885
Equipment	430,944
Capital improvements	701,497
Total all funds	<u>\$31,729,920</u>
Less estimated income	9,674,897
Total general fund appropriation	\$22,055,023

Subdivision 2.

PARDON BOARD

Operating expenses	<u>\$ 1,619</u>
Total general fund appropriation	\$ 1,619
Grand total general fund appropriation S.B. 2022	\$22,056,642
Grand total special funds appropriation S.B. 2022	\$ 9,674,897
Grand total all funds appropriation S.B. 2022	\$31,731,539

SECTION 2. APPROPRIATION - TRANSFER. The amount appropriated for operating expenses and capital improvements in subdivision 1 of section 1 of this Act includes \$397,647 which is hereby appropriated and shall be transferred by the office of management and budget from the North Dakota state penitentiary land fund for the biennium beginning July 1, 1989, and

ending June 30, 1991, as required for disbursement by the director of institutions.

SECTION 3. AMENDMENT. Section 12.1-32-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-32-12. Penalties, sentences, and parole for offenses unclassified and in other titles. Where an offense is defined by a statute or by the constitution without specification of its classification pursuant to section 12.1-32-01, the offense shall be punishable as provided in the statute or constitutional provision defining it, or:

1. If the offense is declared to be a felony, without further specification of punishment, it shall be punishable as if it were a class C felony.
2. If the offense is declared to be a misdemeanor, without further specification of punishment, it shall be punishable as if it were a class A misdemeanor.

The sentencing alternatives available under section 12.1-32-02 shall be available to a court sentencing an offender for commission of an offense defined by a statute outside this title. ~~The mandatory parole component provided by section 12.1-32-10 shall apply to sentences imposed for offenses defined by statutes outside this title.~~

* SECTION 4. AMENDMENT. Section 54-16-11.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-16-11.1. Emergency commission may increase revenues and appropriation authority for intergovernmental service fund agencies. Upon presentation of the verified petition provided for in section 54-16-10, the emergency commission shall meet to determine if additional demand from state agencies requires an increase in appropriation authority and revenue receipts for intergovernmental service agencies. Such agencies are limited to central duplicating, central data processing, state communications, surplus property, roughrider industries division of the department of corrections and rehabilitation, and central microfilm.

SECTION 5. REPEAL. Section 12.1-32-10 of the North Dakota Century Code is hereby repealed.

Approved April 28, 1989
Filed April 28, 1989

* NOTE: Section 54-16-11.1 was also amended by section 1 of House Bill No. 1632, chapter 642.

CHAPTER 52

SENATE BILL NO. 2023
(Committee on Appropriations)

JOB SERVICE NORTH DAKOTA

AN ACT making an appropriation for defraying the expenses of job service North Dakota of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in special funds in the state treasury, not otherwise appropriated, derived from federal funds and other income, to job service North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Salaries and wages	\$27,575,019
Operating expenses	6,425,747
Equipment	680,000
Grants	10,075,000
Total special funds appropriation	\$44,755,766

SECTION 2. APPROPRIATION. All federal funds received by job service North Dakota in excess of those funds appropriated in section 1 of this Act are hereby appropriated for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 53

SENATE BILL NO. 2024
(Committee on Appropriations)

WORKERS COMPENSATION BUREAU

AN ACT making an appropriation for defraying the expenses of the workers compensation bureau and the divisions thereof of the state of North Dakota; and relating to the appointment of the executive director of the workers compensation bureau.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and the workers' compensation fund in the state treasury, not otherwise appropriated, to the workers compensation bureau of the state of North Dakota for the purpose of defraying the expenses of the various divisions thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

WORKERS COMPENSATION BUREAU	
Salaries and wages	\$4,576,055
Data processing	680,703
Operating expenses	2,592,620
Equipment	536,739
Grants, benefits, and claims	711,487
Contingency	100,000
Total all funds	\$9,197,604
Less estimated income	8,980,477
Total general fund appropriation	\$ 217,127

SECTION 2. APPROPRIATION - TRANSFER. The amount appropriated in section 1 of this Act includes \$8,494,105 which is hereby appropriated from the workers' compensation fund for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 3. FIRST EXECUTIVE DIRECTOR - APPOINTMENT. If Senate Bill No. 2324, as approved by the fifty-first legislative assembly becomes effective, in order to facilitate the transition the governor may appoint the chairman of the workers compensation bureau on the effective date of this Act as the first executive director of the workers compensation bureau.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 54

SENATE BILL NO. 2025
(Committee on Appropriations)

STATE RETIREMENT AND PERS

AN ACT making an appropriation for defraying the expenses of the various retirement and investment agencies of the state of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys from special funds derived from income, to the various retirement and investment agencies of the state of North Dakota for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Subdivision 1.

STATE RETIREMENT AND INVESTMENT OFFICE

Salaries and wages	\$1,036,826
Data processing	265,542
Operating expenses	585,313
Equipment	41,000
Contingency	50,000
Total appropriation from the state retirement and investment fund	<u>\$1,978,681</u>

Subdivision 2.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Salaries and wages	\$ 908,689
Data processing	331,000
Operating expenses	463,612
Equipment	15,000
Grants, benefits, and claims	38,000
Contingency	50,000
Total appropriation from the public employees retirement fund	<u>\$1,806,301</u>
Grand total special funds appropriation S.B. 2025	\$3,784,982

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 55

SENATE BILL NO. 2026
(Committee on Appropriations)

VARIOUS DEPARTMENTS AND INSTITUTIONS

AN ACT making an appropriation for defraying the expenses of various departments and institutions of the state of North Dakota; to provide for an appropriation and transfer from the fund for unemployment compensation claims; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, the sums as hereinafter provided or so much thereof as may be necessary. These sums shall increase the general fund and special funds appropriation authority enacted by the fiftieth legislative assembly of the state of North Dakota as adjusted by the allotment process to the stated departments and institutions of the state of North Dakota for the purpose of defraying the expenses thereof, for the period beginning January 1, 1989, and ending June 30, 1989, as follows:

Subdivision 1.

SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	\$ 7,175
Total general fund appropriation	\$ 7,175

Subdivision 2.

DIRECTOR OF INSTITUTIONS

Institutional medical fees	\$ 39,705
Total general fund appropriation	\$ 39,705

Subdivision 3.

STATE LIBRARY

Operating expenses	\$ 17,327
Grants, benefits, and claims	15,148
Total general fund appropriation	\$ 32,475

Subdivision 4.

HOMESTEAD TAX CREDIT

Grants, benefits, and claims	\$ 456,000
Total general fund appropriation	\$ 456,000

Subdivision 5.

SCHOOL FOR THE BLIND

Salaries and wages	\$ 87,134
Operating expenses	51,162
Equipment	2,000
Total general fund appropriation	\$ 140,296

Subdivision 6.

CRIME VICTIMS REPARATION

Grants, benefits, and claims	\$ 68,400
Total general fund appropriation	\$ 68,400

SECTION 2. APPROPRIATION - TRANSFER. The amount of \$1,200,000, or so much thereof as is necessary, is hereby appropriated and shall be transferred from the fund for unemployment compensation claims to the public employees retirement system for the state group health program for the period beginning January 1, 1989, and ending June 30, 1991.

Grand total general fund appropriation S.B. 2026	\$ 744,051
Grand total special funds appropriation S.B. 2026	\$1,200,000
Grand total all funds appropriation S.B. 2026	\$1,944,051

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 56

SENATE BILL NO. 2094
(Committee on Appropriations)
(At the request of the State Department of Health and
Consolidated Laboratories)

BELFIELD/BOWMAN RADIATION REMEDIATION PROJECT

AN ACT to make an appropriation for defraying North Dakota's cost share of the Belfield/Bowman radiation remediation project costs under authority of the Uranium Mill Tailings Radiation Control Act; and to provide authorization to the state department of health and consolidated laboratories to negotiate with the department of energy on behalf of the state of North Dakota concerning the Belfield/Bowman radiation remediation project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$140,000, or so much thereof as may be necessary, to the North Dakota state department of health and consolidated laboratories for the state's ten percent cost share of the Belfield/Bowman radiation remediation project for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 2. Intent and purpose. The Uranium Mill Tailings Radiation Control Act of 1978 [Pub. L. No. 95-604] was enacted to provide a mechanism for federal and state cooperation and funding to clean up abandoned uranium tailings piles needing reclamation in order to protect the health and safety of the general public. On November 8, 1979, the department of energy designated twenty-five "processing sites" throughout the United States, including two in North Dakota near Belfield and Bowman. The Belfield/Bowman project is a multibiennial project that began in the 1987-89 biennium and will be completed in the 1991-93 biennium. The project costs for all uranium radiation cleanup projects are cost-shared at a ninety percent department of energy and ten percent matching state ratio. The costs related to the Belfield/Bowman radiation remediation project through the 1991-93 biennium are projected by the department of energy as follows:

Remediation Construction Costs:

<u>Estimated Total Cost</u>	<u>Estimated 90% Federal Share</u>	<u>Estimated 10% State Share</u>
\$9,330,000	\$8,397,000	\$933,000 [\$140,000 from general fund for 1989-91 biennium] [\$793,000 from other sources]

The other required match can come from any and all nonfederal sources. The state's participation is necessary in order to receive the federal assistance and ensures that the state will have full participation in the selection and performance of the remediation activities.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 57

SENATE BILL NO. 2096

(Committee on Appropriations)

(At the request of the Administrative Committee on Veterans' Affairs)

VETERANS' HOME IMPROVEMENTS

AN ACT to authorize the industrial commission acting as the North Dakota building authority to issue evidences of indebtedness; or in the alternative, to authorize the administrative committee on veterans' affairs to obtain a loan to match federal funds available to construct, modify, or alter the facilities at the veterans' home; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. PROJECT AUTHORIZATION. The industrial commission, acting as the North Dakota building authority, may issue evidences of indebtedness pursuant to chapter 54-17.2 of the North Dakota Century Code, in an amount not exceeding \$1,169,000, which is hereby appropriated to defray that portion of the project costs associated with the construction or renovation of the facilities at the North Dakota veterans' home, hereby declared to be in the public interest. Such authorization to issue evidences of indebtedness is conditional upon the approval of an application by the administrative committee on veterans' affairs for federal funds under 38 U.S.C. 5033 in the form of a grant for use at the veterans' home. This authority of the industrial commission to issue evidences of indebtedness ends on June 30, 1991, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and to comply with any covenants entered into before that date.

SECTION 2. AUTHORITY TO OBTAIN LOAN - CONDITIONS. If the industrial commission acting as the North Dakota building authority does not issue the evidences of indebtedness or does not notify the administrative committee on veterans' affairs on or before October 1, 1989, of its intention to issue evidences of indebtedness authorized under section 1 of this Act, the administrative committee on veterans' affairs is authorized to obtain a loan from the Bank of North Dakota for the purpose of meeting matching requirements for receiving federal funds to construct, modify, or alter facilities at the veterans' home. The loan authorized by this section may not exceed one million one hundred sixty-eight thousand two hundred forty-three dollars. The loan is to be used solely for the purpose of meeting matching requirements for obtaining federal funds under 38 U.S.C. 5033, and the authority to apply for any such loan is conditional upon receiving a grant of such federal funds for the use of the veterans' home. The loan obtained under this section must be repaid solely from funds available in the veterans' home improvement fund from membership contributions. Amounts necessary from the veterans' home improvement fund to repay the loan from the Bank of North Dakota shall be dedicated by the administrative committee on veterans' affairs and are hereby appropriated for repayment of the loan, with interest. Any evidences of indebtedness issued

under the provisions of this section may not become a general obligation of the state of North Dakota. The term of the loan may not exceed twenty years.

SECTION 3. APPROPRIATION. In addition to the authorizations set forth in this Act, there is hereby appropriated out of moneys available from private and public sources, not otherwise appropriated, the sum of \$3,337,836, or so much thereof as may be necessary, to the industrial commission and its agent, or in the alternative to the administrative committee on veterans' affairs for the veterans' home for the purpose of constructing, modifying, or altering the facilities at the veterans' home for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 58

SENATE BILL NO. 2108
(Committee on Appropriations)
(At the request of the Workers Compensation Bureau)

CIVIL AIR PATROL CLAIMS APPROPRIATION

AN ACT providing an appropriation to defray expenses for claim payments to civil air patrol members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$13,801.46, or so much thereof as may be necessary, to the workers compensation bureau for the purpose of reimbursing costs of claim payments in excess of premiums paid for civil air patrol members in accordance with section 65-06.1-04 for the period beginning July 1, 1985, and ending June 30, 1988, for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 59

SENATE BILL NO. 2114
(Committee on Appropriations)
(At the request of the North Dakota Centennial Commission)

FOREST SERVICE TREE PRODUCTION

AN ACT providing an appropriation for the North Dakota forest service to increase tree seedling production and promote tree planting for the North Dakota centennial tree program and to authorize the state forest service to borrow funds for the centennial tree program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the North Dakota forest service for the purpose of increasing tree seedling production and promoting tree planting for the North Dakota centennial tree program, for the biennium beginning July 1, 1989, and ending June 30, 1991.

Salaries and wages	\$190,177
Operating expenses	69,000
Equipment	209,880
Capital improvements	120,000
Total all funds	\$ 589,057
Less estimated income	289,057
Total general fund appropriation	\$ 300,000

SECTION 2. STATE FOREST SERVICE - AUTHORIZATION TO BORROW FUNDS FOR CENTENNIAL TREE PROGRAM. The state forest service may borrow up to \$289,057 from the Bank of North Dakota for the purpose of defraying the expenses of the centennial tree program.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 60

SENATE BILL NO. 2279
(Senators Todd, Thane, Lashkowitz)
(Representatives Wald, D. Larson, Jensen)

ELDERLY AND DISABLED PROGRAM APPROPRIATION

AN ACT providing an appropriation for defraying the expenses of the department of human services' service payments to the elderly and disabled program; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, \$795,000, or so much thereof as may be necessary, to the department of human services for the purpose of defraying the expenses of the service payments to the elderly and disabled program for the period beginning January 1, 1989, and ending June 30, 1989.

SECTION 2. LEGISLATIVE INTENT. The department of human services shall use the moneys appropriated in this Act to the extent necessary to continue payments for in-home services to the elderly and physically disabled at the program level existing prior to January 1, 1989, to provide reimbursement to counties for in-home services and case management provided eligible clients up to a maximum of \$550 per client per month.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved February 15, 1989
Filed February 15, 1989

CHAPTER 61

SENATE BILL NO. 2309
(Senators Yockim, Waldera)
(Representatives Haugen, Goetz, Wald)

OIL AND GAS IMPACT GRANTS

AN ACT to provide for grants to oil and gas development impacted counties and cities; to provide a continuing appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Grants to oil and gas development impacted counties and cities - Continuing appropriation. The board of university and school lands may grant six percent of twelve million dollars annually to oil and gas development impacted counties and cities, from interest earnings on moneys deposited in the coal development trust fund established under subsection 1 of section 57-62-02. Grants may be made for the mitigation of the impact of unpaid special assessments, but before making any grant the board of university and school lands must receive the recommendation of the energy development impact office. To be eligible to receive grants under this section, a county or city must demonstrate that its consolidated mill levy ranks in the highest ten percent of the consolidated mill levies of all political subdivisions of the same kind in this state. The amount authorized for grants under this section is hereby appropriated to the board of university and school lands as a standing and continuing appropriation.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 62

SENATE BILL NO. 2334
(Senators Yockim, Shea)
(Representatives Graba, Kelly, Payne)

TOURIST INFORMATION CENTERS

AN ACT to provide an appropriation for tourist information centers at Bowman, Williston, Fargo, and Grand Forks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section are so much thereof as may be necessary, are hereby appropriated out of any moneys in the state highway fund, not otherwise appropriated, to the economic development commission to construct or lease tourist information centers at Bowman, Williston, Fargo, and Grand Forks, during the period from the effective date of this Act and ending June 30, 1991, as follows:

Operating expenses	\$ 36,000
Equipment	20,000
Capital improvements	<u>133,000</u>
Total state highway fund appropriation	\$189,000

SECTION 2. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the operating expenses line item be used to lease property for the Fargo site.

Approved April 15, 1989
Filed April 17, 1989

CHAPTER 63

SENATE BILL NO. 2405
(Senators Stenehjem, Holmberg)
(Representatives Shaft, Graba, Carlson)

OXFORD HOUSE EXPANSION

AN ACT to authorize the expansion of Oxford House at the university of North Dakota; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AUTHORIZATION TO EXPAND OXFORD HOUSE WITH PRIVATE FUNDS - APPROVAL BY BUDGET SECTION, BOARD OF HIGHER EDUCATION, AND STATE HISTORICAL BOARD - APPROPRIATION. The alumni association of the university of North Dakota may utilize private funds received by gift, devise, or bequest which are hereby appropriated to expand Oxford House, subject to the prior approval of the budget section of the legislative council, the state board of higher education, and the state historical board.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 64

SENATE BILL NO. 2463
(Senators D. Meyer, Redlin)
(Representatives R. Anderson, K. Thompson)

LITTLE MISSOURI WEED CONTROL APPROPRIATION

AN ACT making an appropriation for defraying the expenses of noxious weed control on the Little Missouri River and state-owned Burlington project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is hereby appropriated from the lands and minerals trust fund, the amount of \$34,500, or so much thereof as is necessary, to the board of university and school lands for the purpose of controlling noxious weeds on the bed and islands of the Little Missouri River and on the state-owned Burlington project in Ward County. These funds shall be distributed by the board of university and school lands to the weed boards in Billings, Bowman, Golden Valley, Slope, McKenzie, and Ward counties based upon demonstrated need. Not more than \$15,000 shall be distributed for noxious weed control on the Little Missouri River nor more than \$19,500 for noxious weed control on the state-owned Burlington project in Ward County.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 65

SENATE BILL NO. 2479
(Senators Shea, Ingstad)
(Representatives J. DeMers, Graba)

UND CHILD CARE CENTER

AN ACT to authorize the state board of higher education to issue and sell self-liquidating, tax-exempt bonds for the construction of a child care center at the university of North Dakota; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BOARD OF HIGHER EDUCATION - BOND ISSUANCE - PURPOSES. The state board of higher education, in accordance with chapter 15-55, is hereby authorized to issue and sell self-liquidating, tax-exempt bonds in any amount up to, but not exceeding \$1,362,000, for the purpose of constructing a child care center at the university of North Dakota. Bonds issued under the provisions of this Act may not become a general obligation of the state of North Dakota.

SECTION 2. USE OF PROCEEDS - APPROPRIATION. The proceeds resulting from the sale of bonds authorized under section 1, or so much thereof as may be necessary, plus any available funds received from federal or private sources, are hereby appropriated for the construction and equipment of the facility authorized in section 1. Any unexpended balance from the sale of bonds must be placed in sinking funds for the retirement of the authorized bonds.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 66

SENATE BILL NO. 2500
(Senators Waldera, Maixner, Dotzenrod)
(Representatives Wald, Goetz)

FOSSIL AND WESTERN HISTORY MUSEUM

AN ACT to authorize the state board of higher education to accept a fossil and western history museum at Dickinson state university; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Authorization to accept fossil and western history museum. The state board of higher education may accept as a gift a fossil and western history museum to be built and maintained with private, federal, or local funds at Dickinson state university.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$10,000, or so much thereof as may be necessary, to Dickinson state university for the purpose of hiring a consultant to conduct a feasibility and architectural study regarding the construction of a fossil and western history museum on the campus of Dickinson state university for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 67

SENATE BILL NO. 2523

(Stenehjem)

(Approved by the Committee on Delayed Bills)

AEROSPACE SCIENCE FACILITY

AN ACT to appropriate revenue from operation of the aerospace science training facility at the university of North Dakota to repay a loan from the Bank of North Dakota taken to construct the facility; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BOARD OF HIGHER EDUCATION - AUTHORIZATION FOR REPAYMENT OF BANK OF NORTH DAKOTA LOAN FOR CONSTRUCTION OF AEROSPACE SCIENCE TRAINING FACILITY - APPROPRIATION. There is hereby appropriated to the state board of higher education from any revenue from operation of the aerospace science training facility at the university of North Dakota the sum of \$4,500,000, or so much thereof as may be necessary, for the purpose of repayment of the loan for construction of the facility from the Bank of North Dakota, during the period beginning on the effective date of this Act and ending June 30, 2003. The board may grant the Bank a security interest in the facility and any lease of the facility.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 12, 1989

Filed April 13, 1989

CHAPTER 68

SENATE BILL NO. 2538

(Heigaard, Mushik)

(Approved by the Committee on Delayed Bills)

HUMAN SERVICES PROGRAMS

AN ACT making an appropriation to the department of human services to defray the expenses of developing and expanding programs of active treatment for mentally ill and chemically addicted individuals; providing a transfer from the revolving loan fund maintained in the Bank of North Dakota; stating legislative intent and making an appropriation to the department of human services to supplement senior citizens mill levy match appropriations contained in House Bill No. 1012; stating legislative intent and making an appropriation to the department of human services to supplement the service program for elderly and disabled appropriations contained in House Bill No. 1012; stating legislative intent and making an appropriation to the department of human services for the family subsidy program; establishing a joint medicaid payment account; making an appropriation for the child evaluation and treatment program; making an appropriation for adult protection services; to amend and reenact section 3 of House Bill No. 1037, as approved by the fifty-first legislative assembly, relating to the capital construction fund; authorizing the developmental disabilities revolving loan fund to sell its loans to the Bank of North Dakota; allowing the proceeds of the sale of the loans to assure the availability of funds for predicted caseload growth in medical assistance, aid to families with dependent children, and foster care; providing for a legislative council study of the appropriations process; and providing a transfer to the capital construction fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. PROGRAM ENHANCEMENTS - CONTINUUM OF IMPROVED PATIENT CARE - APPROPRIATION - TRANSFER - REPORT TO BUDGET SECTION. There is hereby appropriated from special funds, not otherwise appropriated, the sum of \$3,971,138, or so much thereof as may be necessary, to the department of human services. In addition, there is hereby transferred, on or before March 1, 1991, the cash balance of, and any payments deposited in, the revolving loan fund created under North Dakota Century Code section 6-09.6-01, the sum of \$1,900,000, or so much thereof as may be necessary, to the department of human services, which is hereby appropriated. These funds must be available to the department of human services for the purpose of developing and expanding community programs of active treatment for mentally ill and chemically addicted individuals which will reduce the average daily census of patients at the state hospital, expand outreach services in rural areas, improve active treatment and care at the state hospital, and address deficiencies identified by the joint commission on the accreditation of health organizations and the health care financing administration. However, the first \$400,000 must be used to fund child evaluation and treatment and adult protective services as set forth in sections 8 and 9 of this Act.

These funds must be available to the department of human services during the biennium beginning July 1, 1989, and ending June 30, 1991. The addition of any staff positions determined necessary by the department to accomplish the purposes of this section must be first approved by the emergency commission. The department shall periodically report to the budget section its progress in developing and expanding community programs, expanding outreach in rural areas, reducing the average daily census at the state hospital, and addressing deficiencies identified by the accreditation and certification entities.

SECTION 2. SENIOR CITIZEN MILL LEVY MATCHING - APPROPRIATION - LEGISLATIVE INTENT. There is hereby appropriated from special funds, not otherwise appropriated, the sum of \$460,000, or so much thereof as may be necessary, to the department of human services for the purpose of maintaining the senior citizen mill levy match during the biennium beginning July 1, 1989, and ending June 30, 1991. It is the intent of the legislative assembly that the state maintain the present level of mill levy matching funds for senior citizen programs and services.

SECTION 3. SERVICE PROGRAM FOR ELDERLY AND DISABLED - APPROPRIATION - LEGISLATIVE INTENT. There is hereby appropriated from special funds, not otherwise appropriated, the sum of \$300,000, or so much thereof as may be necessary, to the department of human services for purposes of supplementing appropriations for the service program for elderly and disabled during the biennium beginning July 1, 1989, and ending June 30, 1991. It is the intent of the legislative assembly that special funds in addition to those appropriated under House Bill No. 1012 be made available to the service program for elderly and disabled.

SECTION 4. FAMILY SUBSIDY PROGRAM - APPROPRIATION - LEGISLATIVE INTENT. There is hereby appropriated from special funds, not otherwise appropriated, the sum of \$300,000, or so much thereof as may be necessary, to the department of human services for the purpose of making service subsidies under the family subsidy program during the biennium beginning July 1, 1989, and ending June 30, 1991. It is the intent of the legislative assembly that the service subsidy component of the family subsidy program for families maintaining developmentally disabled children within their households be continued during the 1989-1991 biennium.

SECTION 5. TRANSFER - CAPITAL CONSTRUCTION FUND. The department of human services upon a billing from the state building authority shall transfer \$1,713,057, or so much thereof as may be necessary, to the capital construction fund established by House Bill No. 1037, for lease payments related to capital improvement projects financed at the Grafton state school and the state hospital under chapter 54-17.2.

SECTION 6. JOINT MEDICAID PAYMENT ACCOUNT - SCHOOL FOR THE BLIND. The state treasurer shall establish a joint medicaid payment account for the department of human services and the school for the blind for purposes of providing services including alternative living arrangements for persons determined eligible for the receipt of residential and/or other services by the school for the blind. This account shall be for the receipt and payment of school for the blind matching funds and department of human services federal medicaid funds for the purpose of making payments to the provider or providers of service as directed by the department of human services. The school for the blind shall provide the department of human services such

administrative services in the documentation and payment of these funds as the department of human services may request.

SECTION 7. APPROPRIATION. There is hereby appropriated from special funds, not otherwise appropriated, the sum of \$1,015,000, or so much thereof as may be necessary, to the department of human services for the biennium beginning July 1, 1989, and ending June 30, 1991, for the purpose of providing matching funds for medicaid eligible services provided for visually impaired including multihandicapped individuals as first determined eligible by the school for the blind.

SECTION 8. CHILD EVALUATION AND TREATMENT PROGRAM - APPROPRIATION. There is hereby appropriated from special funds in the department of human services operating fund, not otherwise appropriated, the sum of \$250,000, or so much thereof as may be necessary, to be provided by the department of human services to the child evaluation and treatment center at its request for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 9. APPROPRIATION. There is hereby appropriated from special funds in the department of human services operating fund, not otherwise appropriated, the sum of \$150,000, or so much thereof as may be necessary, to the department of human services for the purpose of continuing pursuant to House Bill No. 1058 the existing adult protective service demonstration program, as initially authorized by section 2 of chapter 293 of the 1987 Session Laws of North Dakota, in Cass County and the multicounty region served by the Lake Region human service center for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 10. AMENDMENT. Section 3 of House Bill No. 1037, as approved by the fifty-first legislative assembly, is hereby amended and reenacted to read as follows:

SECTION 3. GENERAL FUND TRANSFER - APPROPRIATION. The state treasurer shall transfer an amount, not to exceed a total of ~~\$6,545,000~~ \$4,831,943, which is hereby appropriated, for the biennium beginning July 1, 1989, and ending June 30, 1991, from the general fund to the capital construction fund. The state treasurer shall make the transfer or transfers as provided in this section at such times as may be requested by the industrial commission acting as a state building authority.

SECTION 11. DEVELOPMENTAL DISABILITIES REVOLVING LOAN FUND - AUTHORITY TO SELL LOANS - TRANSFERS. Between April 1 and June 30, 1991, the developmental disabilities revolving loan fund created under North Dakota Century Code section 6-09.6-01, at the request of the executive director of the department of human services, may sell to the Bank of North Dakota up to \$4,200,000 of the outstanding loans of the fund. The sale of loans may be made only if all of the following events occur: (1) other funds do not become available from changes in medicaid funding formula or the enactment of drought relief measures, and (2) the department has requested and been denied funds by the emergency commission, and (3) a deficiency appropriation has not been provided by the fifty-second legislative assembly. Under these circumstances and upon request of the executive director of the department of human services, in addition to other transfers provided for in this Act, up to \$4,200,000 may be transferred between April 1 and June 30, 1991, from and by the developmental disabilities revolving loan fund to the department of human services operating fund as needed to provide the \$4,158,511 of matching

funds required in section 13 of this Act and any additional funds that may be required to complete the transfer in section 1 of this Act.

SECTION 12. DEPOSIT OF STATE FUNDS - BANK OF NORTH DAKOTA. The state treasurer shall maintain a certificate of deposit at the Bank of North Dakota, in such an amount as requested by the president of the Bank of North Dakota not to exceed \$4,200,000, until all loans held by the Bank of North Dakota pursuant to section 11 of this Act have been repaid. The certificate shall earn interest at a rate equal to the weighted average blended interest rate of the loans purchased and outstanding as of July first each year, pursuant to section 11 of this Act reduced by one-half of one percent. The certificate of deposit shall be reduced on July first of each year to equal the outstanding loan balance of the loans purchased pursuant to section 11.

SECTION 13. APPROPRIATION. There is hereby appropriated from special funds in the department of human services operating fund, not otherwise appropriated, the sum of \$12,271,669, or so much thereof as may be necessary, to the department of human services for the purpose of providing grants for increased medical assistance, aid to families with dependent children, and foster care caseloads for the biennium beginning July 1, 1989, and ending June 30, 1991. Unless otherwise available within the department of human services budget, the \$4,158,511 of matching funds are contingently available pursuant to section 11 of this Act from the developmental disabilities loan fund.

Grand total special funds appropriation S.B. 2538 \$20,617,807

SECTION 14. LEGISLATIVE COUNCIL STUDY - APPROPRIATIONS PROCESS. The legislative council or an interim committee designated by the legislative council shall conduct a study during the 1989-90 interim of the appropriations process. The study must include consideration of recommendations for appropriate reference in appropriations bills to programs, departments, agencies, institutions, and activities. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-second legislative assembly.

Approved April 28, 1989
Filed April 28, 1989

GENERAL PROVISIONS

CHAPTER 69

SENATE BILL NO. 2056
(Legislative Council)
(Interim Judiciary Committee)

TECHNICAL CORRECTIONS ACT

AN ACT to amend and reenact sections 4-10-19, 6-09.11-04, subsection 3 of section 10-19.1-116, subsection 2 of section 11-10-10, sections 11-13-18, 12.1-12-02, 12.1-12-09, subsection 1 of section 13-03.1-15, subsection 3 of section 14-09-09.10, sections 16.1-15-06, 19-18-04, 20.1-01-07, 21-10-06, 23-01-09, subsection 2 of section 23-07-01.1, section 23-07.1-03, subsection 2 of section 23-13-02.3, section 24-01-22.1, subsection 1 of section 25-03.1-26, sections 25-04-06, 25-04-07, 25-04-08.1, 25-04-11.1, 25-04-14, subsection 2 of section 25-04-15, subsection 3 of section 25-04-16, section 26.1-09-09, subsection 4 of section 26.1-25-02, sections 26.1-30.1-01, 26.1-36-01, subdivisions i and j of subsection 2 of section 26.1-36-04, sections 26.1-39-10, 26.1-41-08, subsection 1 of section 26.1-41-13, subsection 1 of section 28-01-44, section 30.1-12-05, subsection 4 of section 34-13-01, sections 36-01-21, 37-17.1-16, subsection 3 of section 38-14.1-14, subsection 4 of section 38-14.1-40, sections 39-03.1-26, 39-04-10.2, subsection 7 of section 39-06.1-06, section 39-07-07.1, subsection 5 of section 39-16.1-11, sections 40-23.1-13, 40-40-15, subsection 5 of section 43-07-01, sections 43-07-04, 43-07-11, 43-32-10, 50-06-01.3, 50-06.3-05, 51-04-01, 52-01-02, subsection 3 of section 52-06-01, section 52-06-27, subsection 2 of section 54-27-20.2, section 54-27-20.3, subdivision e of subsection 4 of section 54-52-17, subsection 4 of section 54-52.1-01, subsection 6 of section 55-10-08, subsection 10 of section 57-38-01, sections 59-01-03, 61-01-01, 61-01-26, 61-03-20, subdivision e of subsection 2 of section 61-04.1-16, sections 61-16.1-06, 61-16.1-20, 61-31-09, 65-01-01, subsections 9 and 13 of section 65-01-02, sections 65-01-05, 65-01-11, 65-02-01, 65-04-02, 65-04-04.1, subsection 1 of section 65-04-27.1, sections 65-04-29, 65-05-09.1, 65-05.1-01, subsection 1 of section 65-05.1-03, sections 65-05.1-07, 65-05.2-01, 65-05.2-04, subsection 3 of section 65-06.2-02, sections 65-06.2-03, 65-08-02, 65-08-03, and 65-08-04 of the North Dakota Century Code, relating to improper, inaccurate, redundant, missing, or obsolete references.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10-19. Enforcement - Hearing by commissioner - Application of chapter 28-32. The commissioner shall enforce this chapter and the ~~regulations made thereunder~~ rules adopted under this chapter. Except as provided in section 4-10-14, whenever the commissioner is of the opinion that a violation of this chapter or of the ~~regulations made thereunder~~ rules adopted under this chapter exists, ~~he~~ the commissioner shall hold a hearing

as provided in chapter 28-32. A person aggrieved by a seizure pursuant to section 4-10-14 may request a hearing pursuant to chapter 28-32. If after the hearing, or without hearing if the person involved fails or refuses to appear, the commissioner decides that there has been a violation of this chapter or the rules and regulations derived therefrom, ~~he the commissioner~~ may impose the civil penalty provided in section ~~4-10-20~~ 4-10-22, or if ~~he the commissioner~~ decides that the evidence warrants prosecution, ~~he the commissioner~~ shall proceed as ~~hereinafter~~ provided in this chapter.

* SECTION 2. AMENDMENT. Section 6-09.11-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.11-04. Loans to farmers - Purposes.

- ~~t.~~ The following purposes are eligible to be funded by bond proceeds or loan participations under this chapter:
 - ~~a.~~ 1. Purchasing or leasing agricultural real estate.
 - ~~b.~~ 2. Constructing, repairing, altering, or adding to any farm buildings on agricultural real estate owned or purchased by the farmer.
 - ~~c.~~ 3. Making permanent improvements to agricultural real estate owned or purchased by the farmer for the purpose of increasing the productive value of the land or promoting conservation of the soil.
 - ~~d.~~ 4. Purchasing farm equipment.
 - ~~e.~~ 5. Purchasing livestock.
 - ~~f.~~ 6. Paying off and discharging mortgages, encumbrances, and other charges or liens against or on the agricultural real estate owned or purchased by the farmer.
 - ~~g.~~ 7. Purchasing the farmer's home-quarter pursuant to chapter ~~6-10~~ 6-09.10.

SECTION 3. AMENDMENT. Subsection 3 of section 10-19.1-116 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 3. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge or:
 - a. The costs and expenses of the proceedings, including attorneys' fees and disbursements;
 - b. Debts, taxes and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
 - c. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried ~~workmen's~~ workers' compensation insurance, as provided by law, at the time the injury was sustained;

* NOTE: Section 6-09.11-04 was also amended by section 3 of House Bill No. 1181, chapter 119.

- d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
- e. Other claims duly proved and allowed.

* SECTION 4. AMENDMENT. Subsection 2 of section 11-10-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 2. The county treasurer, county superintendent of schools, register of deeds, county auditor, and clerk of district court each shall receive the following annual salary, payable monthly, for official services rendered:
 - a. Fifteen thousand one hundred dollars in counties having a population of less than eight thousand.
 - b. Fifteen thousand five hundred dollars in counties having a population of or exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.

SECTION 5. AMENDMENT. Section 11-13-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-13-18. Reporting name of blind person for which exemption is claimed. The county auditor of each county shall report to the state highway commissioner the names of all blind persons for which a property exemption is claimed. Such reports as required ~~shall be~~ are for the information of the state highway department in determining the eligibility of any person to operate a motor vehicle on the highways of this state and ~~shall~~ must be kept confidential and not divulged to any person or used as evidence in any trial except that the reports may be admitted in proceedings under ~~sections~~ section 39-06-33 ~~and 39-06-39~~.

SECTION 6. AMENDMENT. Section 12.1-12-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-12-02. Illegal influence between legislators or between legislators and governor. Any person who violates the provisions of section ~~44~~ 9 of article IV or section 11 of article V of the Constitution of North Dakota is guilty of a class C felony.

SECTION 7. AMENDMENT. Section 12.1-12-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-12-09. Definitions for chapter. In this chapter, "thing of value" and "thing of pecuniary value" do not include: ~~4- (1)~~ salary, fees, and other compensation paid by the government in consideration for which the official action or legal duty is performed; or ~~2- (2)~~ concurrence in official action in the course of legitimate compromise among public servants, except

* NOTE: Section 11-10-10 was also amended by section 3 of House Bill No. 1451, chapter 138, and section 1 of House Bill No. 1602, chapter 139.

as provided in section ~~14~~ 9 of article IV or section 11 of article V of the Constitution of North Dakota.

SECTION 8. AMENDMENT. Subsection 1 of section 13-03.1-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Every licensee may make loans, including revolving loans, in any principal amount ~~not less more~~ than one thousand dollars ~~and but~~ not more than thirty thousand dollars and may contract for, receive, or collect interest on such loans at any rate agreed upon by the licensee and the borrower.

* SECTION 9. AMENDMENT. Subsection 3 of section 14-09-09.10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Income" means any form of payment, regardless of source, owed to an obligor, including, ~~but not limited to,~~ an earned, unearned, taxable or nontaxable income, ~~workmen's~~ workers' compensation, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.

SECTION 10. AMENDMENT. Section 16.1-15-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-06. Reports and pollbooks sent to county auditor - Compensation for making returns - County auditor to forward pollbook to clerk of United States district court and to the clerk of the North Dakota district court. By twelve noon of the day following an election except in cases of emergency or inclement weather, the inspector of elections, or one of the judges appointed by ~~him,~~ the inspector of elections, personally shall ~~personally~~ deliver the duplicate reports provided for in section 16.1-15-04 to the county auditor. The reports, carefully sealed under cover, accompanied by both of the pollbooks provided for in section ~~16.1-06-15~~ 16.1-06-21, and the wrapped and sealed stamp and inkpad, with the oaths of the inspector and poll clerks affixed thereto, ~~shall~~ must be delivered properly to the county auditor. The person making the return shall receive compensation therefor in accordance with section 16.1-05-05. However, no compensation and no mileage ~~shall~~ may be paid if delivery of the ballots is not made by twelve noon on the day following the election. The compensation and mileage ~~shall~~ must be paid out of the county treasury on a warrant of the county auditor, and shall be ~~is~~ full compensation for returning all used or voided ballots and, for delivering the ballot boxes to the proper official. Within thirty days after receipt thereof following each presidential election, each county auditor shall forward one of the pollbooks to the clerk of the United States district court for the district encompassing that county for ~~his~~ the clerk's official use. The county auditor shall request return of the pollbook thirty days after receipt thereof by the clerk of the United States district court. The county auditor shall provide the clerk of the North Dakota district court of said county with a pollbook to be used by the clerk for jury selection.

** SECTION 11. AMENDMENT. Section 19-18-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 14-09-09.10 was also amended by section 5 of Senate Bill No. 2245, chapter 148.

** NOTE: Section 19-18-04 was also amended by section 3 of Senate Bill No. 2170, chapter 272.

19-18-04. Registration - Fees. Any person before selling or offering for sale any economic poison for use within this state shall file annually with the department an application for registration of such economic poison. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand, if any, of each product registered, together with an ingredient statement of each product registered in accordance with the provisions of subsection 13 of section 19-18-02, and accompanying each registration application there ~~shall~~ must be filed with the department a label of each product so registered. If the department finds that the application conforms to law, the department shall issue to the applicant a certificate of registration of the product. If after public hearing before the department the application is denied, the product ~~shall~~ may not be offered for sale.
3. Be accompanied by an inspection fee of twenty-five dollars for each product. But in cases where the registration fees have been paid by the manufacturer, jobber, or any person, as required by this section, then in that event nothing in this section ~~shall~~ may be construed as applying to retail dealers selling economic poisons. At the close of each calendar month, the department shall transmit to the state treasurer all moneys received for such licenses. The state treasurer shall credit such moneys to the general fund of the state.

Each registration expires on the thirty-first of December following its issuance. A certificate of registration may not be issued for a term longer than one year, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. A penalty of fifty percent of the license or registration fee ~~shall~~ must be imposed if the license or certificate of registration is not applied for on or before January first of each year, or within the same month such economic poisons are first manufactured or sold within this state.

SECTION 12. AMENDMENT. Section 20.1-01-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-07. Hunting big game or small game other than waterfowl or cranes with motor-driven vehicles prohibited - Exception - Motor-driven vehicle use in transporting big game restricted. Except as provided in subsection 11 of section 20.1-02-05, no person, while hunting big game or small game, other than waterfowl or cranes, statewide, may use a motor-driven vehicle on any land other than an established road or trail, unless ~~he~~ that person has reduced a big game animal to possession and cannot easily retrieve ~~said~~ the big game animal, in which case a motor-driven vehicle may be used to retrieve the big game animal, ~~provided that~~ but after such retrieval, ~~such~~ the motor-driven vehicle ~~is again~~ must be returned to the established road or trail along the same route it originally departed. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting big game or small game, statewide, may drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or

harass or attempt to harass any such game with the use or aid of any motor-driven vehicle. No person, while hunting big game or small game, other than waterfowl or cranes, statewide, may drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail.

SECTION 13. AMENDMENT. Section 21-10-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-06. Funds under management of board - Accounts. The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement.
3. State fire and tornado fund.
4. ~~Workmen's~~ Workers' compensation fund.
5. Veterans' home improvement fund, in accordance with section 37-15-14.1.
6. National guard training area and facility development trust fund.
7. National guard tuition trust fund.

Separate accounting must be maintained for each of the above funds and when it is deemed advantageous in the purchase, sale, or exchange of securities, securities belonging to one or more of the funds or the Bank of North Dakota may be purchased, sold, or exchanged as part of a single transaction. In the event of such sale, the respective funds must immediately be credited with their proportionate share of the proceeds. In the event of such purchase or exchange, title to or credit for the securities ~~shall~~ must be taken in the name of the individual funds, proportionate to their share of the total purchase price.

The board of university and school lands shall consult with the state investment board or the director thereof on investment policies, and the board of university and school lands may delegate authority to the state investment board or the investment director to make such purchases, sales, or exchanges on its behalf.

SECTION 14. AMENDMENT. Section 23-01-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-01-09. Duties of director of consolidated laboratories branch. The director of the consolidated laboratories branch of the state department of health and consolidated laboratories shall ~~include~~:

1. Make bacteriological examination of bodily secretions and excretions and of waters and foods.
2. Make preparations and examinations of pathological tissues submitted by the state health officer, by any county superintendent of public health, or by any physician who has been regularly licensed to practice in this state.

3. Make all analyses and preparations which he is required to make, and furnish the results thereof, as expeditiously and promptly as possible.
4. Cause sanitary statistics to be collected and tabulated, and cause to be ascertained by research work such methods as will lead to the improvement of the sanitation of the various parts of the state.
5. From time to time, cause to be issued bulletins and reports setting forth the results of the sanitary and pathological work done in the laboratories embodying all useful and important information resulting from the work carried on in the laboratories during the year, the substance of such bulletins and reports to be incorporated in the annual report of the state health officer.
6. Be empowered to establish by regulation a schedule of reasonable fees which it may charge for laboratory analysis. No charge ~~shall~~ may, however, be made for any analysis conducted in connection with any public health incident affecting an entire region, community, or neighborhood.

SECTION 15. AMENDMENT. Subsection 2 of section 23-07-01.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Such reports as required in this section are for the information of the state highway commissioner in determining the eligibility of any person to operate a motor vehicle on the highways of this state and must be kept confidential and not divulged to any person or used as evidence in any trial, except that the reports may be admitted in proceedings under ~~sections~~ section 39-06-33 ~~and 39-06-39.~~

SECTION 16. AMENDMENT. Section 23-07.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07.1-03. State has prior claim on patient benefits. Notwithstanding any provision ~~contained~~ in this chapter, ~~the this state of North Dakota shall have~~ has prior claim on benefits for the care and treatment of tuberculosis, including diagnosis, tests, studies, and analyses, accruing to patients for whom care and treatment is provided by the state of North Dakota under entitlement by the federal government, medical or hospital insurance contracts, ~~workmen's~~ workers' compensation or the medical care and disability provisions of programs under the supervision of the department of human services.

* SECTION 17. AMENDMENT. Subsection 2 of section 23-13-02.3 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. At all times during the operation of a self-service motor fuel dispensing facility the owner, operator, employee, or authorized attendant shall be on the premises and shall supervise the operation thereof. The person attending the operation shall refuse service to anyone who appears for any reason to be unable to dispense such motor fuel safely. If, however, the filling station

* NOTE: Subsection 2 of section 23-13-02.3 was also amended by section 1 of Senate Bill No. 2335, chapter 319.

provides pump island service to its customers, the attendant ~~must~~ shall provide refueling services to any ~~handicapped~~ mobility ~~impaired~~ person stopped at a self-service motor fuel dispensing unit who requests assistance and whose vehicle displays a certificate or insignia issued pursuant to section 39-01-15. No additional cost may be charged to a ~~handicapped~~ mobility ~~impaired~~ person because of the service. This subsection ~~shall~~ does not apply to any self-service motor fuel dispensing unit equipped with a card-operated or key-operated dispensing device, provided that all persons possessing the card or keys required to operate the device have been instructed in the proper and safe operation of the device.

SECTION 18. AMENDMENT. Section 24-01-22.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-01-22.1. Appeal after deposit for taking. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for a taking of right of way as authorized by section ~~fourteen of the constitution~~ 16 of article I of the Constitution of North Dakota, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter ~~shall~~ must be tried at the next regular or special term of court with a jury unless a jury ~~be~~ is waived, in the manner prescribed for trials under chapter 32-15.

* SECTION 19. AMENDMENT. Subsection 1 of section 25-03.1-26 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state hospital or public treatment facility ~~must~~ immediately ~~shall~~ accept and a private treatment facility may accept on a provisional basis the application and the person admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, within twenty-four hours after admission, shall either release the person if ~~he~~ the superintendent or director finds that the subject does not meet the emergency commitment standards, or file a petition if one has not been filed with the magistrate of the county of the person's residence, or ~~to~~ of the county of the court which directed immediate custody under subsection 2 of section 25-03.1-25, giving notice to the court and stating in detail the circumstances and facts of the case.

SECTION 20. AMENDMENT. Section 25-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-06. Juvenile court commitment of dependent, neglected, or delinquent mentally deficient - Commitment for observation - Appeal. ~~Whenever~~ In any proceeding instituted in juvenile court, the court may make an order committing the child to the state school whenever it ~~shall~~ appear appears to the satisfaction of the court in any proceeding instituted in ~~juvenile court~~ that the child involved in the proceeding is:

1. Dependent and ~~mentally deficient, or~~ developmentally disabled;
2. Neglected and ~~mentally deficient, developmentally disabled; or~~

* NOTE: Section 25-03.1-26 was also amended by section 19 of Senate Bill No. 2389, chapter 149.

3. Delinquent and ~~mentally deficient~~, developmentally disabled.

the court may make an order committing such child to the state school. If the court ~~shall be~~ is in doubt as to whether the child is ~~mentally deficient~~ developmentally disabled, ~~it~~ the court may make an order committing the child to the state school for observation only by the authorities of such institution. If it is ascertained as a result of such observation that the child is ~~mentally deficient~~ developmentally disabled, a report to such effect ~~shall~~ must be made by the authorities of the school to the court. The court thereupon shall make an order fixing a time for a hearing upon the report showing the child to be ~~mentally deficient~~ developmentally disabled. Notice of such hearing ~~shall~~ must be given to the parents, custodian, or guardian of such child in the manner prescribed by law for the giving of notice in other proceedings in juvenile court. Upon such hearing, the court shall make such order as it may deem proper. Any parent, custodian, guardian, or other person charged with the control of such child may take an appeal from the order made by the court in the manner now prescribed by law for the taking of appeals from decisions of the juvenile court. The procedure provided in this section ~~shall~~ is not be exclusive but ~~shall be~~ is in addition to other procedures provided in this chapter for the commitment of ~~mentally deficient~~ developmentally disabled children to the state school.

SECTION 21. AMENDMENT. Section 25-04-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-07. Mentally deficient Developmentally disabled defendants.

1. When in any cause, other than a proceeding before the juvenile court, it appears that a defendant may be ~~mentally deficient~~ developmentally disabled to such an extent that ~~he~~ the defendant is unable to confer effectively with counsel or to participate adequately in ~~his own~~ the defendant's defense, this issue ~~shall~~ must be adjudicated in accordance with the procedures provided for in chapter 12.1-04. When any person has been adjudicated unfit to stand trial by reason of ~~mental deficiency~~ being developmentally disabled, the court shall initiate a process for the determination of mental incompetency, or for a joint determination of incompetency and defective delinquency as provided hereinafter. If incompetency is established, the court shall appoint an appropriate guardian of the person.
2. If the defendant's condition and behavior is such that it appears to the court that ~~he~~ the defendant may be not only incompetent, but may also constitute a continuing peril to the life, person, or property of others, the court may order ~~his~~ the defendant's admission and temporary detention for a period not to exceed thirty days in a state institution or facility suitable to receive such persons. Prior to the expiration of the order a report ~~shall~~ must be transmitted to the court in accordance with this directive, which report ~~shall~~ must include recommendations concerning the nature and extent of the defendant's ~~mental deficiency~~ developmental disability, the extent to which the individual is able to manage himself and his affairs with ordinary prudence, and the extent and character of any propensity toward aggravated antisocial behavior such as might substantiate a finding of defective delinquency.

3. The court may thereupon conduct a hearing on the joint question of incompetency and defective delinquency, with due notice to all interested parties in the manner provided for in chapter 30.1-28. The court may hear the matter or may order a jury trial. A jury trial ~~shall~~ must be had if demanded by the defendant or someone on ~~his~~ the defendant's behalf.
4. If the defendant is found competent, ~~he shall~~ the defendant must be discharged. If ~~he~~ the defendant is found to be incompetent, but not a defective delinquent, the court shall appoint an appropriate guardian of the person. If ~~he~~ the defendant is found to be a defective delinquent, the court shall appoint an appropriate guardian and may, in addition, issue an order placing ~~him~~ the defendant in the state school at Grafton or other appropriate state facility.
5. Any parent, custodian, guardian, or other person charged with the control of such defendant may take an appeal from the order made by the court in the manner provided by law. The procedure provided in this section ~~shall~~ is not be exclusive but ~~shall be~~ is in addition to any other procedure for the commitment of ~~mentally deficient~~ developmentally disabled persons to the state school or other state facility.

SECTION 22. AMENDMENT. Section 25-04-08.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-08.1. Notification prior to discharge. Prior to discharge the superintendent shall consult with the parent or guardian of the person of the ~~mentally deficient~~ developmentally disabled person, or with the court which ordered the commitment, and shall notify the director of the county social service board of the county wherein it is proposed that such person will assume residence and shall also notify the executive director of the ~~state social service board~~ department of human services.

SECTION 23. AMENDMENT. Section 25-04-11.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-11.1. Disposition of nonresidents - Exceptions - Reciprocal agreements. If a person who has no legal residence in this state or whose residence is unknown is found to be a person requiring care and treatment in the state school, the person ~~shall~~ must be sent to the state school in the same manner, and accompanied by the same documents, as in the case of a resident of this state. The supervising department shall immediately inquire as to the residence of the person or the person's responsible relatives, and, if the residence is found to be in another state or country, the supervising department shall arrange for transportation of the person to the place of legal residence or legal settlement unless the person can be accommodated at the state school without depriving a North Dakota resident of care and treatment at the state school and adequate costs of care are paid for within a reasonable time, or unless a reciprocal agreement has been entered into with another state regarding the care and commitment of the nonresident. The supervising department may enter into reciprocal agreements with other states regarding the mutual exchange, return, and transportation of ~~mentally deficient~~ developmentally disabled persons who are within one state but have

legal residence or legal settlement in another state. The agreements must not contain any provision conflicting with any law of this state.

SECTION 24. AMENDMENT. Section 25-04-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-04-14. Expenses chargeable against patient or patient's estate - Filing claims. Expenses for care and treatment of each patient over twenty-one years of age at the Grafton state school must, if practicable, be in accordance with the cost of providing care and treatment for the different degrees or conditions of mental and physical health and charges may be adjusted in accordance with the patient's ability to pay which must include an estimate of potential future receipts including amounts from estates. The supervising department shall recover from the patient or from a discharged patient expenses chargeable for care and treatment. If any patient is receiving social security benefits or is a veteran who has received, is receiving, or is entitled to receive compensation or pension from the veterans' administration, the expenses are a current claim against the patient and may be recovered monthly by the supervising department except that any amount required by the payor of the benefits to be paid directly to the patient must, upon approval of the director of institutions department of human services, be credited to the patient's personal account from any money thus received.

SECTION 25. AMENDMENT. Subsection 2 of section 25-04-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. No real property belonging to the estate may be sold during the lifetime of the patient except for the maintenance and support of the patient's dependents, unless it is shown that the sale of the property will not result in undue hardship to those dependents, and it may be sold only upon the order of the county court having jurisdiction of the estate, with the consent of the director of institutions department of human services.

*** SECTION 26. AMENDMENT.** Subsection 3 of section 25-04-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. As used in this chapter, "supervising department" means the director of institutions, or the director's designee department of human services.

SECTION 27. AMENDMENT. Section 26.1-09-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-09-09. Annual report - Publication of annual statement - Examination. The attorney, within the time limited for filing the annual report by insurance companies transacting the same kind of business, shall make a report to the commissioner for each calendar year showing the financial condition at the office where the contracts are issued, and shall furnish any additional information and reports the commissioner requires to show the total premiums or deposits collected, the total losses paid, the total amounts returned to subscribers, and the amounts retained for expenses. The attorney may not be required to furnish the names and addresses of any

*** NOTE:** Subsection 3 of section 25-04-16 was also amended by section 4 of House Bill No. 1127, chapter 338.

subscribers. The attorney shall publish an abstract of annual statement as required by section ~~26.1-03-07~~ 26.1-03-10. The business affairs and assets of the attorney are subject to visitation and examination by the commissioner at the expense of the office examined. Where the principal office of the attorney is located in another state, the commissioner, in lieu of an examination conducted by the commissioner's office as provided for in this section, may accept a certified copy of the report of examination made by the insurance office of the state where the principal office is located or by the insurance department of any other state.

SECTION 28. AMENDMENT. Subsection 4 of section 26.1-25-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Insurance against loss or damage to aircraft or against liability, other than ~~workmen's~~ workers' compensation and employers' liability, arising out of ownership, maintenance, or use of aircraft.

SECTION 29. AMENDMENT. Section 26.1-30.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-30.1-01. Application. This chapter applies to policies primarily insuring risks arising from the conduct of a commercial or industrial enterprise except ~~workmen's~~ workers' compensation policies, private passenger automobile policies, inland marine policies, excess umbrella liability policies, errors and omissions policies, and officers and directors liability policies.

SECTION 30. AMENDMENT. Section 26.1-36-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-01. Scope. No section of this chapter applies to or affects (1) any policy of ~~workmen's~~ workers' compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein; or (2) any policy or contract of reinsurance; or (3) any blanket or group insurance policy, except when the section refers to a blanket or group insurance policy; or (4) life insurance, endowment or annuity contracts, or contracts supplemental thereto which contain only such provisions relating to accident and sickness insurance as (a) provide additional benefits in case of death or dismemberment or loss of sight by accident, or as (b) operate to safeguard such contracts against lapse, or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant shall become totally and permanently disabled, as defined by the contract or supplemental contract.

SECTION 31. AMENDMENT. Subdivisions i and j of subsection 2 of section 26.1-36-04 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- i. A provision that if, with respect to a person covered under the policy, benefits for allowable expense incurred during a claim determination period under the policy together with benefits for allowable expense during such period under all other valid coverage exceed the total of the person's allowable expense

during such period, the insurer is liable only for such proportionate amount of the benefits for allowable expense under the policy during such period as (1) the total allowable expense during such period bears to (2) the total amount of benefits payable during such period for such expense under the policy and all other valid coverage (without giving effect to this provision or to any "overinsurance provision" applying to such other valid coverage) less in both (1) and (2) any amount of benefits for allowable expense payable under other valid coverage which does not contain an overinsurance provision. The provision must provide that in no event does the provision operate to increase the amount of benefits for allowable expense payable under the policy with respect to a person covered under the policy above the amount which would have been paid in the absence of the provision. The provision must provide that the insurer may pay benefits to any insurer providing other valid coverage in the event of overpayment by such insurer, and any such payment discharges the liability of this insurer as fully as if the payment had been made directly to the insured, the insured's assignee, or the insured's beneficiary. The provision must provide that in the event that the insurer pays benefits to the insured, the insured's assignee, or the insured's beneficiary, in excess of the amount which would have been payable if the existence of other valid coverage had been disclosed, the insurer has a claim for relief against the insured, the insured's assignee, or the insured's beneficiary, to recover the amount which would not have been paid had there been a disclosure of the existence of the other valid coverage. The provision must provide that the amount of other valid coverage which is on a provision of service basis will be computed as the amount the services rendered would have cost in the absence of such coverage. The provision must provide that:

- (1) "Allowable expense" means one hundred ten percent of any necessary, reasonable, and customary item of expense which is covered, in whole or in part, as a hospital, surgical, medical, or major medical expense under this policy or under any other valid coverage.
- (2) "Claim determination period" with respect to any covered person means the initial period, as provided in the policy, but not less than thirty days and each successive period of a like number of days, during which allowable expense covered under the policy is incurred on account of such person. The first period begins on the date when the first expense is incurred, and successive periods begin when successive expense is incurred after expiration of a prior period.

Or, in lieu thereof:

"Claim determination period" with respect to any covered person means the number of days, as provided in the policy but not less than thirty days during which allowable expense covered under the policy is incurred on account of such person.

- (3) "Overinsurance provision" means the provision which may reduce an insurer's liability because of the existence of benefits under other valid coverage.

This type of provision may be inserted in all policies providing hospital, surgical, medical, or major medical benefits. The insurer may make this provision applicable to either or both: other valid coverage with other insurers; and, except for individual policies individually underwritten, other valid coverage with the same insurer. The insurer must shall include in the provision a definition of "other valid coverage". The definition may include hospital, surgical, medical, or major medical benefits provided by group, blanket, or franchise coverage, individual and family-type coverage, blue cross-blue shield coverage, and other prepayment plans, group practice, and individual practice plans, uninsured benefits provided by labor-management trustee plans, or union welfare plans, or by employer or employee benefit organizations, benefits provided under governmental programs, workmen's workers' compensation insurance, or any coverage required or provided by any other statute, and medical payments under automobile liability and personal liability policies. Other valid coverage may not include payments made under third party liability coverage as a result of a determination of negligence. The insurer may require, as part of the proof of claim, the information necessary to administer the provision.

- j. A provision that after the loss-of-time benefit of the policy has been payable for ninety days, such benefit will be adjusted, as provided below, if the total amount of unadjusted loss-of-time benefits provided in all valid loss-of-time coverage upon the insured should exceed a percent of the insured's earned income as provided in the policy; provided, however, that if the information contained in the application discloses that the total amount of loss-of-time benefits under the policy and under all other valid loss-of-time coverage expected to be effective upon the insured in accordance with the application for this policy exceeded an alternative percent of the insured's earned income as provided in the policy, at the time of the application, such higher percentage will be used in place of the original percent provided. The provision must provide that the adjusted loss-of-time benefit under the policy for any month will be only such proportion of the loss-of-time benefit otherwise payable under the policy as (1) the product of the insured's earned income and the original percent (or, if higher, the alternative percentage) bears to (2) the total amount of loss-of-time benefits payable for such month under the policy and all other valid loss-of-time coverage on the insured (without giving effect to the "overinsurance provision" in this or any other coverage) less in both (1) and (2) any amount of loss-of-time benefits payable under other valid loss-of-time coverage which does not contain an "overinsurance provision". The provision must provide that in making the computation, all benefits and earnings will be converted to a consistent basis weekly if the loss-of-time benefit of the policy is payable weekly, or monthly if the benefit is payable monthly, or otherwise, based upon the time

period. If the numerator of the foregoing ratio is zero or is negative, no benefit is payable. The provision must provide that in no event does the provision operate to reduce the total combined amount of loss-of-time benefits for such month payable under the policy and all other valid loss-of-time coverage below the lesser of three hundred dollars and the total combined amount of loss-of-time benefits determined without giving effect to any "overinsurance provision", nor operate to increase the amount of benefits payable under the policy above the amount which would have been paid in the absence of the provision, nor take into account or operate to reduce any benefit other than the loss-of-time benefit. The provision must provide that:

- (1) "Earned income", except where otherwise specified, means the greater of the monthly earnings of the insured at the time disability commences and the insured's average monthly earnings for a period of two years immediately preceding the commencement of the disability, and does not include any investment income or any other income not derived from the insured's vocational activities.
- (2) "Overinsurance provision" includes this type of provision and any other provision with respect to any loss-of-time coverage which may have the effect of reducing an insurer's liability if the total amount of loss-of-time benefits under all coverage exceeds a stated relationship to the insured's earnings.

This type of provision may be included only in a policy which provides a loss-of-time benefit which may be payable for at least fifty-two weeks, which is issued on the basis of selective underwriting of each individual application, and for which the application includes a question designed to elicit information necessary either to determine the ratio of the total loss-of-time benefits of the insured to the insured's earned income or to determine that such ratio does not exceed the percentage of earnings, not less than sixty percent, selected by the insurer and inserted in lieu of the blank factor above. The insurer may require, as part of the proof of claim, the information necessary to administer this provision. If the application indicates that other loss-of-time coverage is to be discontinued, the amount of such other coverage must be excluded in computing the alternative percentage in the first sentence of the overinsurance provision. The policy must include a definition of "valid loss-of-time coverage" which may include coverage provided by governmental agencies and by organizations subject to regulation by insurance law and by insurance departments of this or any other state or of any other country or subdivision thereof, coverage provided for the insured pursuant to any disability benefits statute or any workmen's worker's compensation or employer's liability statute, benefits provided by labor-management trustee plans or union welfare plans or by employer or employee benefit organizations, or by salary continuance or pension programs, and any other coverage the inclusion of which may be approved.

SECTION 32. AMENDMENT. Section 26.1-39-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-39-10. Property and casualty policies - Declination, cancellation, and nonrenewal - Scope. Sections 26.1-39-10 through 26.1-39-21 apply to insurance policies or risks located or resident in this state which are issued and take effect or which are renewed after July 1, 1983, and insure against any of the following:

1. Loss of or damage to real property which consists of not more than four residential units, one of which is the principal place of residence of the named insured.
2. Loss of or damage to personal property owned by the named insured or used for personal, family, or household purposes within a residential dwelling.
3. Legal liability of the named insured arising out of bodily injury to or death of any persons or damage to property, except bodily injury, death, or property damage arising out of business pursuits other than professional legal or medical services.

Sections 26.1-39-10 through 26.1-39-21 do not apply to workmen's workers' compensation policies, automobile policies, inland marine policies, insurance policies issued through a residual market mechanism, or policies primarily insuring risks arising from the conduct of a commercial or industrial enterprise.

For purposes of sections 26.1-39-10 through 26.1-39-21, any policy period or term of less than six months is considered a policy period or term of six months and any policy period or term of more than one year or any policy with no fixed expiration date is considered a policy period or term of one year.

SECTION 33. AMENDMENT. Section 26.1-41-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-41-08. Secured person exemption.

1. In any action against a secured person to recover damages because of accidental bodily injury arising out of the ownership or operation of a secured motor vehicle in this state, the secured person is exempt from liability to pay damages for:
 - a. Noneconomic loss unless the injury is a serious injury.
 - b. Economic loss to the extent of all basic no-fault benefits paid or to become payable for such injury under this chapter after subtracting the same elements of loss recoverable under any workmen's workers' compensation law.
2. The exemption under subsection 1 does not apply unless the person who has sustained accidental bodily injury is a person who may qualify for basic no-fault benefits pursuant to section 26.1-41-06 and who is not excluded under section 26.1-41-07.

SECTION 34. AMENDMENT. Subsection 1 of section 26.1-41-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A basic no-fault insurer has the primary obligation to make payment for economic loss because of accidental bodily injury arising out of the operation of a motor vehicle; provided, that the amount of all benefits a claimant recovered or is entitled to recover for the same elements of loss under any ~~workmen's~~ workers' compensation law must be subtracted from the basic no-fault benefits otherwise payable for the injury.

SECTION 35. AMENDMENT. Subsection 1 of section 28-01-44 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. No action, whether in contract, oral or written, ~~sealed or unsealed~~, in tort or otherwise, to recover damages:
 - a. For any deficiency in the design, planning, supervision, or observation of construction or construction of an improvement to real property;
 - b. For injury to property, real or personal, arising out of any such deficiency; or
 - c. For injury to the person or for wrongful death arising out of any such deficiency,

~~shall~~ may be brought against any person performing or furnishing the design, planning, supervision, or observation of construction, or construction of such an improvement more than ten years after substantial completion of such an improvement.

SECTION 36. AMENDMENT. Section 30.1-12-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-12-05. (3-105) Proceedings affecting devolution and administration - Jurisdiction of subject matter. Persons interested in decedents' estates may apply to the court for determination in the informal proceedings provided in chapters 30.1-12 through 30.1-23, and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in chapters 30.1-12 through 30.1-23. The court has exclusive jurisdiction of formal proceedings to determine how decedents' estates subject to the laws of this state are to be administered, expended, and distributed, including actions to determine title to property alleged to belong to the ~~state~~ estate and of any action or proceeding in which property distributed by a personal representative or its value is sought to be subjected to rights of creditors or successors of the decedent.

SECTION 37. AMENDMENT. Subsection 4 of section 34-13-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Employment agent" or "employment agency" means any person, firm, corporation, or association in this state engaged for hire or compensation in the business of furnishing:

- a. Persons seeking employment or changing employment, with information or other service enabling or tending to enable such persons to procure employment, by or with employers, other than such employment agent; or
- b. Any other person, firm, corporation, or association who may be seeking to employ or may be in the market for help of any kind, with information enabling or tending to enable such other person, firm, corporation, or association to procure such help.

The term "employment agent" or "employment agency" does not include any person, firm, corporation, or association employing individuals to render part-time or temporary services to or for a third person, if the person, firm, corporation, or association employing the individuals, in addition to wages or salaries, pays social security and unemployment insurance taxes, provides workmen's workers' compensation coverage, and is responsible for the acts of the employees while rendering services to or for a third person.

* SECTION 38. AMENDMENT. Section 36-01-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-21. Definitions. For purposes of sections 36-01-21 through 36-01-28, unless the context or subject matter otherwise requires:

1. "Garbage" means animal and vegetable waste matter resulting from the handling, preparation, cooking, and consumption of foods, including animal carcasses or parts thereof, except that dairy products from a licensed creamery or dairy may not be considered garbage under the definitions of this section.
2. "Person" means the state, any municipality, political subdivision, institution, public or private corporation, individual, partnership, or other entity.

SECTION 39. AMENDMENT. Section 37-17.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-17.1-16. Immunity and exemption.

1. All functions hereunder and all other activities relating to emergency management are hereby declared to be governmental functions. Neither the state nor any county or city or its departments and agencies, or any disaster or emergency worker complying with or reasonably attempting to comply with this chapter, or any executive order or disaster or emergency operational plan pursuant to the provisions of this chapter, or pursuant to any ordinance relating to any precautionary measures enacted by any county or city of the state, except in case of willful misconduct, gross negligence, or bad faith, is liable for the death of or injury to persons, or for damage to property, as a result of any such activity. ~~The provisions of this~~ This section ~~do~~ does not affect the right of any person to receive benefits to which ~~they~~ that person would otherwise be entitled under this chapter, or under the workmen's workers' compensation law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any Act of Congress.

* NOTE: Section 36-01-21 was also repealed by section 32 of House Bill No. 1121, chapter 425.

2. Any requirement for a license to practice any professional, mechanical, or other skill does not apply to any authorized disaster or emergency worker who, in the course of performing their duties, practices such professional, mechanical, or other skill during a disaster or emergency.

SECTION 40. AMENDMENT. Subsection 3 of section 38-14.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Each applicant for a permit shall submit to the commission as part of the permit application a certificate issued by an insurance company authorized to do business in ~~the this state of North Dakota~~ certifying that the applicant has a public liability insurance policy in force for the surface coal mining and reclamation operations for which such permit is sought. Such policy must provide for personal injury and property damage protection in an amount adequate to compensate any persons, except employees covered by ~~workmen's workers'~~ compensation insurance pursuant to chapter 65-01, damaged as a result of surface coal mining and reclamation operations including use of explosives and entitled to compensation under the applicable provisions of state law. Such policy must be maintained in full force and effect during the terms of the permit or any renewal, including the length of all reclamation operations. The policy must include a rider requiring that the insurer notify the commission whenever substantive changes are made in the policy, including any termination or failure to renew. All operations must cease if the policy is terminated or is not renewed.

SECTION 41. AMENDMENT. Subsection 4 of section 38-14.1-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Any person who is injured in his person or property through the violation by any operator or permittee of any ~~regulation rule~~, order, or permit issued pursuant to this chapter may bring an action for damages ~~+~~, including reasonable attorney and expert witness fees~~+~~, or for temporary or permanent equitable relief. ~~Nothing in this~~ This subsection ~~affects~~ does not affect the rights established by or limits imposed under the state ~~workmen's workers'~~ compensation laws.

SECTION 42. AMENDMENT. Section 39-03.1-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-26. Payments under other laws. All payments provided for in this chapter are in addition to any other benefits now or hereafter provided for under the ~~workmen's workers'~~ compensation laws of ~~the this state of North Dakota~~.

* SECTION 43. AMENDMENT. Section 39-04-10.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-10.2. Special plates for physically handicapped mobility impaired persons. The registrar of motor vehicles shall issue, without charge, upon application and payment of the regular license fee, plates marked with a special identifying insignia, symbol, or design making them distinctly different from other number plates, to any physically handicapped mobility impaired applicant upon submission by the applicant of a certificate

* NOTE: Section 39-04-10.2 was also amended by section 3 of Senate Bill No. 2335, chapter 319.

issued by a qualified physician to the registrar that the applicant is a ~~physically handicapped person~~ mobility impaired within the meaning of subsection 2 of section 39-01-15. The registrar shall determine the form and size of the insignia, symbol, or design, and shall ~~promulgate~~ adopt rules and regulations governing the issuance thereof.

* SECTION 44. AMENDMENT. Subsection 7 of section 39-06.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. For a violation of subsection 6 8 of section 39-01-15, any municipal ordinance equivalent to subsection 6 8 of section 39-01-15, or any traffic parking regulations on any state charitable or penal institution property or on the state capitol grounds, a fee in the amount of five dollars.

** SECTION 45. AMENDMENT. Section 39-07-07.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-07-07.1. Provision of envelopes for traffic and parking violations on state charitable or penal institution property or state capitol grounds. Preprinted envelopes must be provided for any person who elects to post bond by mail, pursuant to section 39-06.1-02, for a violation of subsection 6 8 of section 39-01-15 or any state traffic parking regulations on any state charitable or penal institution property or on the state capitol grounds.

SECTION 46. AMENDMENT. Subsection 5 of section 39-16.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Such motor vehicle liability policy need not insure any liability under any ~~workmen's~~ workers' compensation law nor any liability on account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured, or while engaged in the operation, maintenance, or repair of any such motor vehicle nor any liability for damage to property owned by, rented to, in charge of, or transported by the insured.

SECTION 47. AMENDMENT. Section 40-23.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-23.1-13. Governing body to hear and determine appeals and objections to assessments - Altering assessments - Limitations. At the regular meeting of the governing body at which the assessment list is to be acted upon, any person aggrieved by the determination of the city auditor, in regard to any assessment who has appealed therefrom as provided in section ~~40-23-14~~ 40-23.1-12, may appear before the governing body and present ~~his~~ that person's reasons why the action of the city auditor should not be confirmed. The governing body shall hear and determine the appeals and objections and may increase or diminish any of such assessments as ~~it~~ the governing body may deem just, in the event that the formula provided for in sections 40-23.1-02 and 40-23.1-03 proves to be inapplicable. The governing body may increase or diminish any assessment as may be just and necessary to make the aggregate of all assessments equal to the total amount required to pay the entire cost of the work for which such assessments are made, or the part of such cost to be paid by special assessment. No assessment ~~shall~~ may exceed the benefits as determined, in accordance with this chapter by the city auditor, to the parcel of land assessed.

* NOTE: Subsection 7 of section 39-06.1-06 was also amended by section 4 of Senate Bill No. 2335, chapter 319.

** NOTE: Section 39-07-07.1 was also amended by section 5 of Senate Bill No. 2335, chapter 319.

SECTION 48. AMENDMENT. Section 40-40-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-40-15. Expenditures made or liabilities incurred beyond appropriation - Joint and several liability of members of governing body. Except as otherwise provided in ~~sections 40-40-17 and~~ section 40-40-18, no municipal expenditure ~~shall~~ may be made nor liability incurred, and no bill ~~shall~~ may be paid for any purpose in excess of the appropriation made therefor in the final budget. Expenditures made, liabilities incurred, or warrants issued in excess of the appropriations ~~shall be~~ are a joint and several liability of the members of the governing body who authorized the making, incurring, or issuing thereof or who were present when they were authorized and did not vote against authorizing the same.

SECTION 49. AMENDMENT. Subsection 5 of section 43-07-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The term "nonresident contractor" denotes and applies to any contractor who has not an established and maintained place of business within this state, or who has not made reports to the North Dakota workers compensation bureau within the previous year of employees within this state, and who has not made contribution to the North Dakota ~~workmen's~~ workers' compensation fund accordingly, or who, during a like period has not made an income tax return in this state.

SECTION 50. AMENDMENT. Section 43-07-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-04. License - How obtained. To obtain a license under this chapter, an applicant shall submit, on such forms as the registrar shall prescribe, an application under oath containing a statement of the applicant's experience and qualifications as a contractor, and the names of three persons who are knowledgeable about the applicant's experience and qualifications. A bond, as hereinafter prescribed, ~~shall must~~ be filed with the application and the contractor shall submit a statement from the North Dakota workers compensation bureau that the contractor has secured ~~workmen's~~ workers' compensation coverage satisfactory to ~~that the~~ the bureau along with such other information as may be required by the registrar to assist ~~him the~~ the registrar in determining the applicant's fitness to act in the capacity of a contractor. The application ~~shall must~~ contain a statement that the applicant desires the issuance of a license under ~~the terms of~~ this chapter, and ~~shall must~~ specify the class of license sought. Any person refused a license by the registrar ~~shall have a right of may~~ appeal from such refusal to the district court of Burleigh County, ~~North Dakota,~~ if a nonresident, or to the district court of the county of ~~his~~ residence, if a resident of ~~North Dakota this~~ state.

* SECTION 51. AMENDMENT. Section 43-07-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-11. Contractor's bond - Requirements. Every contractor ~~as~~ ~~hereinbefore defined shall be~~ is required to execute and file with the application for license required by this chapter a good and valid bond issued by a surety company authorized to do business in this state or, in the case of class D contractors only, a personal bond with two sureties who are

* NOTE: Section 43-07-11 was also amended by section 1 of Senate Bill No. 2205, chapter 507.

acceptable to the registrar and who are residents of ~~the this~~ state of North Dakota. Every ~~such~~ bond for a class A contractor ~~shall must~~ be written in the amount of two thousand dollars; bonds for class B, C, and D contractors ~~shall must~~ be in the amount of one thousand dollars, each running to the state of North Dakota and conditioned upon the payment of all taxes, including ~~the workers'~~ compensation premiums under ~~the Workmen's Compensation Law~~, title 65, and unemployment compensation contributions due under ~~the Unemployment Compensation Law~~, chapters 52-01 through 52-07.1, ~~of the state of North Dakota~~, all use taxes required to be paid by the contractor to the state of North Dakota and all income taxes withheld or required to be withheld from employees pursuant to chapter 57-38, which may accrue to the state of North Dakota or the political subdivisions thereof on account of the execution and performance of the construction contract or subcontract; provided that any bond required by this section ~~shall be~~ is in addition to any bond required by ~~the provisions of~~ section 48-01-05 and ~~shall~~ is also be in addition to the obligation imposed by ~~the provisions of~~ section 57-40.2-14 upon a surety company to the state of North Dakota. Every contractor, ~~as hereinbefore defined~~, upon making application for renewal of ~~his~~ the contractor's license ~~shall may~~ not be required to furnish a contractor's bond; however, the secretary of state as registrar ~~shall may~~ not issue a certificate of renewal to any contractor upon notification by any department or agency of the state or political subdivision thereof, any secrecy provisions contained in the North Dakota tax laws notwithstanding, that the contractor has not paid a tax or other obligation presently due to the state of North Dakota or its political subdivisions. Upon notification that the contractor has been delinquent in the payment of any tax or other obligation to the state of North Dakota or the political subdivisions thereof, the secretary of state shall require the bond specified herein prior to the renewal of the license.

SECTION 52. AMENDMENT. Section 43-32-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-32-10. Power of board to administer oaths - Conduct hearings - Summon witnesses - Take testimony. The members of the board and the secretary may administer oaths. The board may summon witnesses as provided in ~~section 43-17-09 and 43-17-10~~, chapter 28-32 and take testimony in all matters relating to its duties, including the enforcement of the provisions and purposes of this chapter and the rules and regulations adopted by the board.

* SECTION 53. AMENDMENT. Section 50-06-01.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01.3. Executive director - Appointment - Compensation. The executive director of the department shall be appointed by, and shall serve at the pleasure of, the governor. The executive director shall take the oath of office required of civil officers by section 44-01-05 and ~~shall be bonded as required of civil officers by section 44-01-06~~. The executive director shall receive compensation in the amount established by the governor within the limits of legislative appropriations.

SECTION 54. AMENDMENT. Section 50-06.3-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 50-06-01.3 was also amended by section 2 of Senate Bill No. 2291, chapter 575.

50-06.3-05. Handicapped patients - Limitation. Notwithstanding any other provision of this chapter, no handicapped patient under twenty-one years of age or the estate or the parent of such patient may be charged for educational or related services provided at the state hospital. However, the department ~~shall have~~ has prior claim on all benefits accruing to such patients for medical and medically related services under entitlement from the federal government, medical or hospital insurance contracts, ~~workmen's~~ workers' compensation, or medical care and disability provisions of programs administered by the department. For the purposes of this section, "related services" means transportation and such developmental, corrective, and other supportive services, as determined by the department of public instruction, as are required to assist a handicapped patient to benefit from special education. The cost of related services, other than medical and medically related services, shall be paid by the state hospital, the school district of residence of the handicapped child, and other appropriate state agencies and political subdivisions of this state. The department of public instruction, the department, the school district of residence, and other appropriate state agencies and political subdivisions, as determined by the department of public instruction, shall determine and agree to that portion of related services, other than medical and medically related services, for which each such agency and political subdivision shall be liable. The department of public instruction may adopt rules necessary to implement ~~the provisions of~~ this section.

SECTION 55. AMENDMENT. Section 51-04-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-04-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Merchandise" ~~shall does~~ not include any livestock or agricultural product.
2. "Transient merchant" includes any person, individual, copartnership, or corporation, either as principal or agent, who engages in, does, or transacts any temporary or transient business in this state, either in one locality, or in traveling from place to place in this state, selling, or soliciting orders for future delivery of, goods, wares, merchandise, personal property, and personal services including, ~~but not limited to,~~ spraying, trimming, or pruning of trees and shrubs of all species, painting or repairing buildings or structures, pest or rodent control, and taking photographs for present or future delivery, who does not intend to become and does not become a permanent merchant of such place.

SECTION 56. AMENDMENT. Section 52-01-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-01-02. Employing unit to keep records - Reports of employing unit - Inspection prohibited - Exception. Each employing unit shall keep true and accurate work records containing such information as the bureau may prescribe. ~~Such~~ The records ~~shall must~~ be open to inspection and may be copied by the bureau or its authorized representatives at any reasonable time as often as may be necessary. The bureau or the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the bureau, or ~~he~~ the chairman,

deems necessary for the effective administration of the North Dakota Unemployment Compensation Law. In addition, the bureau or the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the workers compensation bureau deems necessary for effective administration of the North Dakota ~~Workmen's~~ Workers' Compensation Law set forth in title 65. Such reports must be provided to the workers compensation bureau by the bureau or the chairman of any appeal tribunal. Information thus obtained ~~shall~~ may not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the employing unit's identity, but any claimant or ~~his~~ the claimant's legal representative at a hearing before an appeal tribunal or the bureau ~~shall~~ must be supplied with information from such records to the extent necessary for the proper presentation of ~~his~~ the claim.

SECTION 57. AMENDMENT. Subsection 3 of section 52-06-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. He is able to work and is available for suitable work and actively seeking work; provided,
 - a. That notwithstanding any other provisions in this section, no otherwise eligible individual ~~shall~~ may be denied benefits for any week because ~~he~~ the individual is in training with the approval of the bureau by reason of the application of provisions of this subsection relating to availability for work and to active search for work, or the provisions of subsection 3 of section 52-06-02 relating to disqualification for benefits for failure to apply for, or a refusal to accept, suitable work;
 - b. ~~and c. Repealed by S.L. 1973, ch. 391, § 24.~~
 - d. That no claimant ~~shall~~ may be considered ineligible in any week of unemployment for failure to comply with ~~the provisions of~~ this subsection, if ~~such~~ the failure is due to an illness or disability not covered by ~~workmen's~~ workers' compensation insurance and which occurred after ~~he~~ the claimant has registered for work and no work has been offered ~~the claimant~~ which is suitable;

SECTION 58. AMENDMENT. Section 52-06-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-27. Judicial review of decision - Petition - Filing. A party to proceedings before the bureau may obtain a judicial review of the decision of the bureau by filing a petition for ~~such~~ review within thirty days after the date of mailing the bureau's decision to ~~such~~ the party at his the party's last known address, or in the absence of mailing, within thirty days after delivery of the decision to ~~such~~ the party. The petition for review ~~shall~~ must be filed in the district court of the county in which the petitioner resides, ~~and shall~~ must be verified, and ~~shall~~ must state the grounds upon which review is sought. All other parties to the proceeding before the bureau ~~shall~~ must be parties respondent. The bureau ~~shall be~~ is deemed to be a party to any such proceeding. If the bureau is a party respondent, the petition ~~shall~~ must be served upon it by leaving with it or its chairman, or

any other representative as it may designate for that purpose, as many copies of the petition as there are respondents. With its answer or petition, the bureau shall certify and file with the court a verified copy of the record of the case, including all documents and papers and a transcript of all testimony taken in the matter, together with the bureau's findings, conclusions, and decision therein. Upon the filing of a petition for review by the bureau or upon the service of the petition upon it, the bureau forthwith shall send by registered ~~or certified~~ mail to each other party to the proceeding a copy of such petition and such mailing ~~shall be~~ is deemed to be completed service upon all such parties. In any proceeding under this section the finding of the bureau as to the facts, if supported by evidence and in the absence of fraud, ~~shall be~~ is conclusive and the review by the court ~~shall~~ must be confined to questions of law. Such proceedings ~~shall~~ must be heard by the court and ~~shall~~ must be given precedence over all other civil cases except cases arising under the ~~workmen's~~ workers' compensation statute of this state. An appeal may be taken from the decision of the district court to the supreme court of ~~the~~ this state of North Dakota in the same manner as is provided in civil cases. Upon the final termination of such judicial proceeding, the bureau shall enter an order in accordance with the mandate of the court.

SECTION 59. AMENDMENT. Subsection 2 of section 54-27-20.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The remainder ~~shall~~ must be allocated in the following manner:

- a. Such money ~~shall~~ must be allocated to all countywide areas so that each countywide area shall receive an amount which bears the same ratio as the real property tax levy in dollars of all political subdivisions within the countywide area bears to the sum of the products. For the purposes of ~~sections 54-27-20.1 through this section and section 54-27-20.3~~, countywide area is the geographic area of a county.
- b. The county government and all cities within the countywide area ~~shall~~ must be allocated that portion of the amount allocated to the countywide area pursuant to subdivision a which bears the same ratio to such amount as each such county's or city's real property tax levy in dollars bears to the sum of the real property tax levy in dollars of all cities and county government within that countywide area.

SECTION 60. AMENDMENT. Section 54-27-20.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-27-20.3. Disbursement of local funds - Reports. Cities, city park districts, ~~county governments~~ counties, and townships may receive and expend payments made pursuant to ~~sections 54-27-20.1 through 54-27-20.3~~ section 54-27-20.2 and this section and such payments shall be considered an appropriation in the budget of the local unit of government, which, upon the order of the governing body may be disbursed in the manner other disbursements are made. The state revenue sharing moneys so received ~~shall~~ must be treated as a part of the local tax effort of each local unit of government receiving such funds. The state treasurer may require local units of government receiving state revenue sharing funds to provide such

information or copies of reports as may be necessary to administer ~~sections 54-27-20.1 through 54-27-20.3~~ section 54-27-20.2 and this section.

* SECTION 61. AMENDMENT. Subdivision e of subsection 4 of section 54-52-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- e. Disability retirement benefits ~~shall~~ must be calculated at sixty percent of the member's final average salary, reduced by the member's primary benefits under the Social Security Act as amended, and by any ~~workmen's~~ workers' compensation benefits paid.

** SECTION 62. AMENDMENT. Subsection 4 of section 54-52.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Eligible employee" means every permanent employee who is employed by a governmental unit, as that term is defined in section 54-52-01. "Eligible employee" includes members of the legislative assembly, judges of the supreme court, paid members of state or political subdivision boards, commissions, or associations, full-time employees of political subdivisions, elective state officers as defined by subsection 2 of section 54-06-01, and disabled permanent employees who are receiving compensation from the North Dakota ~~workmen's~~ workers' compensation fund. As used in this subsection, "permanent employee" means one whose services are not limited in duration ~~and~~, who is filling an approved and regularly funded position in a governmental unit, and ~~who~~ is employed at least twenty hours per week and at least five months each year.

SECTION 63. AMENDMENT. Subsection 6 of section 55-10-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. ~~In the event~~ If a city, county, school district, or other political subdivision objects to any decision of the state historical board to disallow alteration or demolition of a site listed on the state historical sites registry, such political subdivision may submit the objection to arbitration as provided in this subsection. Arbitration may also be demanded by either the board or such political subdivision if the board or the political subdivision determines that the other has failed to cooperate in identifying or implementing reasonable alternatives to demolition or alteration. The party desiring arbitration shall make a written demand therefor of the other and in such demand shall name three arbitrators. The demand must also set forth the objections which the party desires to submit to arbitration, with reference to the particular state historic site. Such demand must be served upon the other party, which, within ten days, shall name in writing three arbitrators, and in connection therewith shall set forth in writing its response to the objections set forth in the demand served upon it and any additional objections which it desires to submit to arbitration on its part. The six arbitrators so selected shall name a seventh arbitrator. If the party proceeded against shall fail or refuse to name three arbitrators, the moving party may apply ex parte to the

* NOTE: Section 54-52-17 was also amended by sections 2, 3, and 4 of House Bill No. 1092, chapter 666; sections 1 and 2 of House Bill No. 1227, chapter 668; section 6 of House Bill No. 1586, chapter 223; section 1 of Senate Bill No. 2135, chapter 670; and section 1 of Senate Bill No. 2112, chapter 669.

** NOTE: Subsection 4 of section 54-52.1-01 was also amended by section 1 of House Bill No. 1156, chapter 674.

judge of the district court of the county in which the state historical site in question, or any part thereof, may be located, for the appointment of the unnamed arbitrators, and if upon the appointment of three arbitrators by each of the parties, the six so appointed have been unable to agree upon a seventh arbitrator within five days, then either party, upon five days' notice may apply to such district court for the appointment of such seventh arbitrator. The political subdivision may select its arbitrators from among the governing board of the affected political subdivision, from any regular or special committee appointed by the governing board, whether serving on such governing board or not, or from any combination thereof. The state historical board may select its arbitrators from among the board itself, from an executive committee of the board, or from any combination thereof. When a panel of arbitrators has been appointed, a submission in writing must be ~~executed as provided in section 32-29-02, except that such~~ acknowledged by the parties thereto in the same manner as a conveyance of real property and may fix the time on or before which the award must be made. The submission must provide for the entry of judgment upon the award by the district court of the county within which the state historical site or some part thereof is located. The submission must also provide that each party shall bear its own arbitration costs and expenses, however the costs and expenses relating to the seventh arbitrator must be borne equally by both parties to the dispute. The seven arbitrators shall proceed to resolve the controversies brought before them, and the decision of the arbitrators, or a majority of them, must be given in writing to the board or the officials concerned and shall be binding upon both parties. Thereafter, the arbitration must proceed in accordance with the provisions of chapter ~~32-29~~ 32-29.1.

SECTION 64. AMENDMENT. Subsection 10 of section 57-38-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. Any term, as used in ~~chapters 57-38, 57-38-1, 57-38-2, 57-59, or in any other section or provision of the~~ this code, as it pertains to the filing and reporting of income, deductions, or exemptions or the paying of North Dakota income tax, ~~shall have~~ has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required or contemplated.

SECTION 65. AMENDMENT. Section 59-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

59-01-03. Purpose for which express trust may be created. A trust may be created for any purpose for which a contract lawfully may be made, except as otherwise prescribed by chapters ~~2 and 3 of this title and chapter 10 of title 47~~ 47-10, 59-02, and 59-03.

SECTION 66. AMENDMENT. Section 61-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-01. Waters of the state - Public waters. All waters within the limits of the state from the following sources of water supply, namely belong to the public and are subject to appropriation for beneficial use and the

right to the use of these waters for such use must be acquired pursuant to chapter 61-04:

1. Waters on the surface of the earth excluding diffused surface waters but including surface waters whether flowing in well-defined channels or flowing through lakes, ponds, or marshes which constitute integral parts of a stream system, or waters in lakes; ~~and~~
2. Waters under the surface of the earth whether such waters flow in defined subterranean channels or are diffused percolating underground water; ~~and~~
3. All residual waters resulting from beneficial use, and all waters artificially drained; and
4. All waters, excluding privately owned waters, in areas determined by the state engineer to be noncontributing drainage areas. A noncontributing drainage area is ~~hereby defined to be~~ any area ~~which that~~ does not contribute natural flowing surface water to a natural stream or watercourse at an average frequency ~~oftener~~ more often than once in three years over the latest thirty-year period~~+~~

~~belong to the public and are subject to appropriation for beneficial use and the right to the use of these waters for such use; shall be acquired pursuant to the provisions of chapter 61-04.~~

SECTION 67. AMENDMENT. Section 61-01-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-26. Declaration of state water resources policy. In view of legislative findings and determination of the ever-increasing demand and anticipated future need for water in North Dakota for every beneficial purpose and use, it is hereby declared to be the water resources policy of the state that:

1. The public health, safety and general welfare, including without limitation, enhancement of opportunities for social and economic growth and expansion, of all of the people of the state, depend in large measure upon the optimum protection, management, and wise utilization of all of the water and related land resources of the state.
2. Well-being of all of the people of the state shall be the overriding determinant in considering the best use, or combination of uses, of water and related land resources.
3. Storage of the maximum water supplies shall be provided wherever and whenever deemed feasible and practicable.
4. Accruing benefits from these resources can best be achieved for the people of the state through the development, execution, and periodic updating of comprehensive, coordinated, and well-balanced short-term and long-term plans and programs for the conservation and development of such resources by the departments and agencies of the state having responsibilities therefor.

5. Adequate implementation of such plans and programs shall be provided by the state through cost-sharing and cooperative participation with the appropriate federal and state departments and agencies and political subdivisions within the limitation of budgetary requirements and administrative capabilities.
6. Required assurances of state cooperation and for meeting nonfederal repayment obligations of the state in connection with federal-assisted state projects shall be provided by the appropriate state department or agency.
7. Required assurances of local cooperation and for meeting nonfederal repayment obligations of local interests in connection with federal-assisted local projects may, at the request of political subdivisions or other local interests be provided by the appropriate state department or agency, provided, if for any reason it is deemed necessary by any department or agency of the state to expend state funds in order to fulfill any obligation of a political subdivision or other local interests in connection with the construction, operation, or maintenance of any such project, the state shall have and may enforce a claim against the political subdivision or other local interests for such expenditures.

The provisions of this ~~chapter shall~~ section may not be construed ~~to~~ in any manner to limit, impair, or abrogate the rights, powers, duties, or functions of any department or agency of the state having jurisdiction or responsibilities in the field of water and related land resources conservation, development, or utilization.

SECTION 68. AMENDMENT. Section 61-03-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-03-20. State engineer to cooperate with United States geological survey in making topographic maps. The state engineer may confer with the director of the United States geological survey and may accept the cooperation of the United States with this state in the execution of topographic surveys and maps of this state. The state engineer may arrange with ~~said~~ the director or other authorized representative of the United States geological survey concerning the details of such work, the method of its execution, and the order in which these surveys and maps of different parts of the state shall be undertaken. In any such work the director of the United States geological survey shall agree to expend on the part of the United States upon said work a sum equal to that appropriated by the state from time to time for this purpose. In arranging ~~these details heretofore referred to,~~ the state engineer, in addition to such other provisions as ~~he~~ the state engineer may deem wise, shall require that the maps resulting from this survey ~~shall~~ show the outlines of all counties, towns, and extensive wooded areas, as existing on the ground at the time of the execution of the survey, the location of all railways, roads, streams, canals, lakes, and rivers, and ~~shall~~ contain contour lines showing the elevation and depression for at least every twenty feet [6.10 meters] ~~or oftener~~ in vertical interval of the surface of the country. The resulting map ~~shall~~ must recognize wholly the cooperation of the state of North Dakota, and as each manuscript sheet of the map is completed the United States geological survey should furnish the state engineer ~~shall be furnished by the United States geological survey~~ with photographic copies of the same. As the engraving on each sheet is completed

the director shall furnish the state engineer ~~shall be furnished by said director~~ with transfers from the copperplates of the same.

SECTION 69. AMENDMENT. Subdivision e of subsection 2 of section 61-04.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- e. The applicant has North Dakota ~~workmen's~~ workers' compensation insurance coverage for all employees working in ~~North Dakota~~ this state.

SECTION 70. AMENDMENT. Section 61-16.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-06. District budget - Tax levy - Financing by special assessment. The fiscal year of the district ~~shall begin~~ begins January first and ~~end ends~~ December thirty-first. The water resource board shall estimate the expenses of the district before October first of each year. Estimates of district expenses may include costs of rights of way, easements, or other interests in property deemed necessary for the construction, operation, and maintenance of any projects. The district budget may also include an amount necessary for future projects which are part of a master plan ~~prepared and adopted pursuant to section 61-16.1-13~~. Upon completion and adoption of a budget covering necessary expenses, the board shall send a copy of the budget to the county auditor of each county in the district. Each county auditor shall transmit the same to the board of county commissioners of his or her county. The board of county commissioners shall either disapprove the budget, amend and approve the budget as amended, or approve the budget as submitted and, if approved as amended or as submitted, the board shall, by resolution, levy and authorize and direct the county auditor to extend and spread upon the tax roll of the county or portion of the county in the district a tax not exceeding the limitation in section 57-15-26.6 in the same manner, and with the same effect, as general property taxes are extended and spread. Funds produced each year by the tax levy shall be available until expended, and if the tax levy in any year will not produce sufficient revenue to cover district expenses, a fund sufficient to pay the district expenses may be accumulated. The acquisition of rights of way, easements, and the construction, operation, and maintenance of a project in a district may, in the discretion of the water resource board, be financed in whole or in part by special assessments against property benefited by such project, or from revenues realized from general tax collections, or from net revenues to be derived from service charges to be imposed and collected for the services of the project, or any combination of such sources.

SECTION 71. AMENDMENT. Section 61-16.1-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-20. Voting right or powers of landowners. In order that there may be a fair relation between the amount of liability for assessments and the power of objecting to the establishment of a proposed project, the voting rights of affected landowners on the question of establishing the project ~~shall be~~ are as provided in this section. The landowner or landowners of tracts of land affected by the project ~~shall~~ have one vote for each dollar of assessment that ~~his~~ the land is subject to or one vote for each dollar of the assessed valuation of land condemned for the project, as determined in accordance with title 57. The governing body of any county, township, or city to be assessed ~~shall~~ also have has one vote for each dollar of

assessment against such city county, township, or city. ~~It is the intent of this section to allow~~ There may be only one vote for each dollar of assessment, regardless of the number of owners of such tract of land. Where more than one owner of such land exists, the votes ~~shall~~ must be prorated among them in accordance with each owner's property interest. A written power of attorney ~~shall authorize~~ authorizes an agent to protest a project on behalf of any affected landowner or landowners.

SECTION 72. AMENDMENT. Section 61-31-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-31-09. Drainage of wetlands. The state engineer shall notify the commissioner of any drainage permit application pursuant to section ~~61-16-1-4~~ 61-32-03 which has been denied by the state engineer. Each water resource district shall notify the commissioner of any drainage permit application pursuant to section ~~61-16-1-4~~ 61-32-03 which has been denied by a water resource district. The notice ~~shall~~ must be sent to the commissioner by certified mail not later than ten days after the decision. After receipt of the notice, the commissioner shall investigate the wetland area proposed to be drained to determine whether it would be eligible for inclusion in the state waterbank program, and shall take appropriate action to attempt to enter into an agreement under this chapter with the landowner for conservation of the wetland area.

SECTION 73. AMENDMENT. Section 65-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-01. Purposes of compensation law - Police power. The state of North Dakota, exercising its police and sovereign powers, declares that the prosperity of the state depends in a large measure upon the well-being of its wage workers, and, hence, for ~~workmen~~ workers injured in hazardous employments, and for their families and dependents, sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this title, and to that end, all civil actions and civil claims for relief for such personal injuries and all jurisdiction of the courts of the state over such causes are abolished except as is otherwise provided in this title.

* SECTION 74. AMENDMENT. Subsections 9 and 13 of section 65-01-02 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

9. "Employee" means every person engaged in a hazardous employment under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, and:

a. ~~Such~~ The term includes:

- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city.
- (2) Aliens.

* NOTE: Section 65-01-02 was also amended by section 1 of Senate Bill No. 2256, chapter 765, and section 4 of Senate Bill No. 2324, chapter 295.

- (3) Poor relief workers except such as are engaged in repaying to counties relief moneys which the counties have been compelled by statute to expend for poor relief.
- (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person may have any claim for relief or right to compensation for any injury to such minor ~~workman~~ worker, but in the event of the award of a lump sum of compensation to such minor employee, such sum shall be paid only to the legally appointed guardian of such minor.

b. ~~Such~~ The term does not include:

- (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of ~~his~~ that person's employer.
- (2) Any person who is engaged in an illegal enterprise or occupation.
- (3) The spouse or child of the employer dwelling in the household of the employer.

c. Persons employed by subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium therefor. This subdivision ~~may not be construed as imposing~~ does not impose any liability upon a general contractor other than liability to the bureau for the payment of premiums ~~which~~ that are not paid by a subcontractor or independent contractor.

13. "Fund" means the North Dakota ~~workmen's~~ workers' compensation fund.

SECTION 75. AMENDMENT. Section 65-01-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-05. Employment of those unprotected by insurance unlawful - Effect of failure to secure compensation - Penalty - Injunction. It ~~shall be~~ is unlawful for any employer to employ anyone, or to receive the fruits of the labor of any person, in a hazardous employment as defined in this title, without first making application for ~~workmen's~~ workers' compensation insurance coverage for the protection of such employees by notice to the bureau of the intended employment, the nature thereof, and the estimated payroll expenditure for the coming twelve-month period. Failure to secure ~~workmen's~~ workers' compensation coverage for employees by application for ~~workmen's~~ workers' compensation insurance ~~shall constitute~~ constitutes a class A misdemeanor. Where the employer is a corporation, the president, secretary, treasurer, or person with primary responsibility ~~shall be~~ is liable for the failure to secure ~~workmen's~~ workers' compensation coverage under this section. In addition to the penalties prescribed ~~above~~ by this

section the bureau may, by injunction proceedings as provided for in this title, enjoin any employer from unlawfully employing uninsured workers.

SECTION 76. AMENDMENT. Section 65-01-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-11. Burden of proof in compensation matters - Death certificate. If the bureau or an employer ~~shall claim~~ claims that an employee is not entitled to the benefits of the North Dakota ~~Workmen's Workers'~~ Workers' Compensation Law by reason of the fact that ~~his~~ the employee's injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary intoxication of the employee, the burden of proving such exemption or forfeiture ~~shall be~~ is upon the bureau or upon the person alleging the same; however, a blood alcohol level above the legal intoxication limit as defined in subsection 3 of section 39-20-07 ~~shall create~~ creates a rebuttable presumption that the injury was due to intoxication. Any claimant against the fund, however, ~~shall have~~ has the burden of proving by a preponderance of the evidence that ~~he~~ the claimant is entitled to participate in the same. In the event of a claim for death benefits the official death certificate ~~shall must~~ be considered as evidence of death and may not be used to establish the cause of death.

* SECTION 77. AMENDMENT. Section 65-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-01. ~~Workmen's~~ Workers compensation bureau - Membership - Terms of office. The North Dakota ~~workmen's workers~~ workers compensation bureau ~~shall must~~ be maintained for the administration of the provisions of this title. ~~Such~~ The bureau ~~shall consist~~ consists of three ~~workmen's compensation~~ workers' compensation commissioners who ~~shall must~~ be appointed by the governor. The terms of the commissioners ~~shall be~~ are six years, and ~~shall must~~ be arranged so that the term of one commissioner ~~and of only one~~ shall expire expires on the tenth day of July in each odd-numbered year. One ~~of the commissioners~~ commissioner ~~shall must~~ be a representative of labor, one ~~shall must~~ be a representative of the public, and one ~~shall must~~ be a representative of the employers. The commissioners shall devote their entire time to the duties of the bureau, and each commissioner shall serve until ~~his~~ a successor has been appointed and qualified. Any commissioner may be removed by the governor for cause.

SECTION 78. AMENDMENT. Section 65-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-02. Statutory reserve. Ten percent of the money that is paid into the ~~workmen's workers'~~ workers' compensation fund ~~shall must~~ be set aside for the creation of a surplus until such surplus ~~shall amount~~ amounts to the sum of fifty thousand dollars, after which time the sum of five percent of all the money paid into such fund ~~shall must~~ be credited to such surplus fund until, in the judgment of the bureau, ~~such the~~ surplus ~~shall be~~ is sufficiently large to guaranty the fund from year to year. Thereafter ~~such~~ transfer of ~~said~~ funds to the surplus fund may be discontinued temporarily for one or more years, or until, in the judgment of the bureau, the transfer of five percent of all money paid into such fund to such surplus again ~~shall be~~ is necessary.

SECTION 79. AMENDMENT. Section 65-04-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 65-02-01 was also amended by section 6 of Senate Bill No. 2324, chapter 295.

65-04-04.1. Determination of weekly wage for premium purposes to veteran-on-the-job trainee. Whenever an employer employs a person known as a veteran-on-the-job trainee, as defined under Public Laws 16 and 346 of the United States Congress, the premium for ~~workmen's~~ workers' compensation coverage ~~shall~~ must be based on a minimum weekly wage of thirty dollars per week.

SECTION 80. AMENDMENT. Subsection 1 of section 65-04-27.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. To protect the lives, safety, and well-being of wage workers, to ~~insure~~ ensure fair and equitable contributions to the state ~~workmen's~~ workers' compensation insurance fund between all employers, and to protect the ~~workmen's~~ workers' compensation fund, the ~~workmen's~~ workers' compensation bureau may institute injunction proceedings in the name of the state of North Dakota against certain employers to prohibit them from employing others in those employments defined as hazardous by this title in any of the following instances:
 - a. When it has been brought to the attention of the bureau that the employer has unlawfully employed uninsured workers in violation of the provisions of section 65-01-05; ~~or~~
 - b. When the employer defaults in the payment of insurance premiums into the state fund; or
 - c. When the bureau, in exercise of the power and authority granted by section 65-03-01, giving it full power and jurisdiction over and the supervision of, every employment and every place of employment for the purpose of issuing and enforcing all necessary and proper safety rules and regulations, finds that it is necessary to enjoin and restrain certain employers and employments in order to protect the lives and safety of the employees because of failure or refusal to comply with necessary and proper safety rules and regulations.

The courts of this state are vested with jurisdiction and power to grant such preventive relief in the instances herein set forth.

SECTION 81. AMENDMENT. Section 65-04-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-29. Employers carrying on nonhazardous employment may come under law - Employee's option. Any employer carrying on any employment not ~~classed~~ defined as hazardous under ~~the definition of that term contained in~~ section 65-01-02 who complies with ~~the provisions of~~ this title and who ~~shall pay~~ pays into the fund the premiums provided for under this chapter ~~shall be is~~ covered under the fund and ~~shall is~~ not be liable to respond in damages at common law or by statute for injuries to or the death of any employee, wherever occurring, during the period covered by such premiums. Any employee who elects before injury not to come under ~~workmen's~~ workers' compensation insurance may do so by notifying the ~~workmen's~~ workers' compensation bureau and the employer of such election in writing.

* SECTION 82. AMENDMENT. Section 65-05-09.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 65-05-09.1 was also amended by section 4 of Senate Bill No. 2237, chapter 766.

65-05-09.1. Social security offset. When an injured employee, spouse, or dependent of an injured employee, is eligible for and is receiving permanent total or temporary total disability benefits under section 65-05-09, and is also eligible for, is receiving, or will receive, benefits under Title II of the Social Security Act [42 U.S.C. 423], the aggregate benefits payable under section 65-05-09 ~~shall~~ must be reduced, but not below zero, by an amount equal as nearly as practical to one-half of such federal benefit. The amount of the offset computed by the bureau initially ~~will~~ must remain the same throughout the period of eligibility and ~~will~~ may not be affected by any increase or decrease in federal benefits.

Any injured employee, or dependent of an injured employee, receiving permanent total or temporary total disability benefits under section 65-05-09 and whose benefits are offset as provided herein, ~~shall~~ is not be eligible for any escalation of benefits which would adversely affect the bureau's right to offset ~~workmen's~~ workers' compensation benefits against social security benefits, as provided for in this chapter. This offset will become effective on January 1, 1980, provided that it meets the criteria necessary to allow states to offset federal benefits under Title II of the Social Security Act [42 U.S.C. 424a].

* SECTION 83. AMENDMENT. Section 65-05.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.1-01. Rehabilitation services. The state of North Dakota exercising its police and sovereign powers, declares that disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.

It is the purpose of this chapter to provide for the health and welfare by ensuring to ~~workmen's~~ workers' compensation claimants otherwise covered by this title, services, so far as possible, necessary to assist the claimant and the claimant's family in the adjustments required by the injury to the end that the claimant may receive comprehensive rehabilitation services. Such services shall include medical, psychological, economic, and social rehabilitation.

** SECTION 84. AMENDMENT. Subsection 1 of section 65-05.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Direct the implementation of programs for individual ~~workmen's~~ workers' compensation claimants in accordance with bureau determinations in compliance with the purpose of this chapter.

SECTION 85. AMENDMENT. Section 65-05.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.1-07. Person furnishing training exempt from civil liability - Claimant's remedy. Any person, partnership, corporation, association, or agency that furnishes on-the-job or other similar training to a ~~workmen's~~ workers' compensation claimant as the result of a rehabilitation contract, without establishing an employment relationship with the claimant, ~~shall~~ be is exempt from all civil liability.

* NOTE: Section 65-05.1-01 was also amended by section 1 of House Bill No. 1191, chapter 771.

** NOTE: Section 65-05.1-03 was also amended by section 16 of Senate Bill No. 2324, chapter 295.

SECTION 86. AMENDMENT. Section 65-05.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.2-01. Eligibility for supplementary benefits. ~~Any workmen's A workers'~~ compensation claimant who was receiving temporary total disability benefits, permanent total disability benefits, or death benefits as of July 1, 1980, and is receiving such benefits as of July 1, 1985, is eligible for supplementary benefits. Eligibility for supplementary benefits starts on July 1, 1985, and lasts for as long as the claimant is entitled to ~~workmen's workers'~~ compensation benefits.

SECTION 87. AMENDMENT. Section 65-05.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.2-04. Supplementary benefit fund. The bureau ~~periodically~~ shall ~~periodically~~ determine the amount of money earned on reserves in the ~~workmen's workers'~~ compensation fund necessary to provide for the payment of supplementary benefits under this chapter and ~~periodically~~ shall ~~periodically~~ transfer an adequate amount from the earnings on the reserves of the ~~workmen's workers'~~ compensation fund to the supplementary benefit fund.

SECTION 88. AMENDMENT. Subsection 3 of section 65-06.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. ~~Workmen's Workers'~~ compensation benefits under this chapter accrue and are payable from the time of the inmate's release from the institution or after discharge from public service. Disability benefits ~~shall~~ must be computed according to the methods provided in chapter 65-05. The inmate's weekly wage ~~shall~~ must be computed using either the actual wage paid to the inmate or the federal minimum wage as of the date of injury, whichever is higher.

SECTION 89. AMENDMENT. Section 65-06.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-06.2-03. ~~Workmen's Workers'~~ compensation coverage of inmates. Any county or city ~~may~~, by resolution of the governing body, ~~may~~ elect to cover its inmates with ~~workmen's workers'~~ compensation benefits in accordance with ~~the provisions of this chapter~~. Any county or city ~~which that~~ makes this election ~~shall~~ is not be liable to respond in damages at common law or by statute for injuries to or the death of any inmate whenever the provisions of this chapter have been met and the premiums as set by the bureau are not in default.

SECTION 90. AMENDMENT. Section 65-08-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-08-02. Reciprocity in extraterritorial application of compensation acts of various states provided. An employee who is a resident of another state and ~~his~~ the employer from another state ~~shall be~~ is exempted from the ~~provisions of this title~~ while such nonresident employee is temporarily within ~~the this~~ state of North Dakota doing work for ~~such the~~ nonresident employer:

1. If that employer has furnished to such employee ~~workmen's workers'~~ compensation insurance under the ~~Workmen's Workers'~~ Compensation

Act, or any similar act, of such other state, covering such employee's employment in North Dakota this state.

2. If the extraterritorial coverage furnished by this title and granted to employers resident in North Dakota this state covering employment of his employees while working in such other state is recognized by such other state.
3. If the employers and employees resident in North Dakota this state who are covered by the provisions of this title are likewise exempted from the application of the Workmen's Workers' Compensation Act, or any similar act, of such other state.

If the annual payroll expended within North Dakota this state by a nonresident employer exceeds one thousand dollars then the out-of-state employer ~~shall~~ may no longer be considered as operating in North Dakota this state on a temporary basis, unless there is an agreement between the North Dakota ~~workmen's workers~~ compensation bureau and a similar agency of the other state where the employer is a resident, and such agreement provides otherwise.

The benefits under the Workmen's Workers' Compensation Act or similar laws of the other state, or other remedies under a like act or laws are the exclusive remedy against the employer for any resulting injury or death suffered by such employee while working for that employer in ~~the~~ this state of North Dakota.

SECTION 91. AMENDMENT. Section 65-08-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-08-03. Evidence that nonresident employer carries extraterritorial compensation coverage. A certificate from the executive secretary or other duly authorized officer of the ~~workmen's workers~~ compensation bureau or similar bureau of another state certifying that an employer of such other state is insured under the Workmen's Workers' Compensation Act or similar act thereof, and has provided extraterritorial coverage insuring ~~his~~ that employer's employees while working within ~~the this~~ state of North Dakota, ~~shall be,~~ is prima facie evidence that such employer carries such compensation insurance.

* SECTION 92. AMENDMENT. Section 65-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-08-04. Agreements between states relating to conflicts of jurisdiction. The ~~workmen's workers~~ compensation bureau, through the action of a majority of the commissioners, ~~shall have authority to~~ may enter into agreements with the ~~workmen's workers'~~ compensation agencies of other states relating to conflicts of jurisdiction where the contract of employment is in one state and the injuries are received in the other state, or where there is a dispute as to the boundaries or jurisdiction of the states and when such agreements have been executed and made public by the respective state agencies, the rights of the employee hired in such other state and injured while temporarily employed in North Dakota this state, or hired in North Dakota this state and injured while temporarily employed in another state, or where the jurisdiction is otherwise uncertain, ~~shall~~ must be determined pursuant to such agreements and confined to the jurisdiction provided in such agreements. Where such an agreement exists, any provisions of this chapter which conflict with the provisions of that agreement ~~shall be~~ are superseded by the provisions of that agreement.

Approved March 14, 1989
Filed March 15, 1989

* NOTE: Section 65-08-04 was also amended by section 18 of Senate Bill No. 2324, chapter 295.

CHAPTER 70

SENATE BILL NO. 2153
(Committee on State and Federal Government)
(At the request of the Governor)

CHRISTMAS EVE STATE OFFICE CLOSING

AN ACT to create and enact a new section to chapter 1-03 of the North Dakota Century Code, relating to the closing of state offices on Christmas Eve.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 1-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Closing of state offices - Christmas Eve. State offices must be closed at twelve noon on December twenty-fourth, Christmas Eve day, unless it is a weekend or holiday pursuant to section 1-03-02.1.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 71

HOUSE BILL NO. 1226
(Representatives Martinson, A. Hausauer, L. Hanson)
(Senators Olson, D. Meyer, Waldera)

CENTENNIAL HOLIDAY

AN ACT to designate July 3, 1989, as a public holiday in recognition of the North Dakota centennial.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. North Dakota centennial holiday. Monday, July 3, 1989, is a holiday in recognition of the centennial of the state of North Dakota.

Approved April 3, 1989
Filed April 3, 1989

AERONAUTICS

CHAPTER 72

SENATE BILL NO. 2243
(Committee on Transportation)
(At the request of the Governor)

DEPARTMENT OF TRANSPORTATION

AN ACT to create and enact six new sections to chapter 24-02, a new subsection to section 57-43.1-01, a new section to chapter 57-43.1, a new subsection to section 57-43.2-01, and a new section to chapter 57-43.2 of the North Dakota Century Code, relating to a department of transportation, its director, its assumption of functions and structure, administrative rules and references, and cooperative agreements that may be entered into by the director of the department of transportation with other states for exchange of information and auditing of users of motor fuels and special fuels used in fleets of motor vehicles that operate interstate; to amend and reenact section 2-05-03, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-03-03, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, section 49-18-41.1, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, and subsection 6 of section 57-40.3-01 of the North Dakota Century Code, relating to reporting by the director of aeronautics to the director of the department of transportation, substituting the department of transportation or its director for the state highway department or department of motor vehicles in definitions under titles 24 and 39, highway contracts, junkyard and billboard regulation, financial responsibility, snowmobile regulation, railroad service contracts, interstate motor carrier registration stamps, reports to the governor, tax revenue distribution and motor vehicle excise tax; to repeal sections 24-02-01, 24-02-02, 24-02-03, 24-02-04, 24-02-05, 24-02-06, and 24-02-38, subsection 14 of section 39-01-01, and sections 39-02-01, 39-02-02, and 39-02-04, relating to the state highway department, highway commissioner and commissioner's duties, highway chief engineer, additional highway appropriations, the motor vehicle registrar, and the registrar's salary, powers, and duties; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-05-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2-05-03. Powers and duties of director. The director shall be the executive officer of the commission. ~~He~~ The director shall attend all meetings of the commission, but has no voting power. At the direction of the commission, ~~he~~ the director shall, together with the chairman of the commission, execute all contracts entered into by the commission which are legally authorized. The director shall appoint, subject to the approval of the commission, such employees as may be necessary for the proper discharge

of the functions of the commission. The director shall act as the agent of the tax commissioner for purposes of enforcement of chapter 57-40.5. Whenever requested by the director of the department of transportation as provided in section 4 of this Act, the director shall report administratively concerning all activities of the aeronautics commission.

SECTION 2. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Department of transportation and director of the department of transportation to be substituted for motor vehicle department, registrar of motor vehicles, highway department, and highway commissioner. Wherever the terms "motor vehicle department", "registrar of motor vehicles", "highway department", or "highway commissioner", or any derivative of those terms which, when used in context indicates an intention to refer to those persons or departments, shall appear in the North Dakota Century Code, the term "department of transportation", or the term "director of the department of transportation", as the case may be, shall be substituted therefor. It is the intent of the legislative assembly that the department of transportation and the director of the department of transportation must be substituted for, shall take any actions previously taken by, and shall perform all duties previously performed by the motor vehicle department, the registrar of motor vehicles, the highway department, and the highway commissioner.

SECTION 3. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Department of transportation - Creation - Transfer of functions. There is hereby established an executive department of this state to be known as the department of transportation. There are hereby transferred to and vested in the department of transportation all the functions, powers, and duties of the following governmental agencies:

1. The highway department, the highway commissioner, and the chief engineer, including titles 24 and 39, chapter 49-17.1, and sections 49-10.1-17, 49-17.2-27, 55-01-01, and 55-08-02.1.
2. The motor vehicle department and the registrar of motor vehicles, including title 39, chapter 57-40.3, and sections 26.1-23-03 and 26.1-41-02.

SECTION 4. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Director of the department of transportation - Appointment - Compensation. The department of transportation must be managed and directed by the director of the department of transportation, who must be appointed by, and serve at the pleasure of, the governor. The director shall take the oath of office required of civil officers by section 44-01-05 and must be bonded as required of civil officers by section 44-01-06. The director shall receive compensation in the amount established by the governor within the limits of legislative appropriations.

SECTION 5. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Structure of the department of transportation. The department of transportation must be structured to promote efficient and effective operations consistent with fulfilling its statutory duties. The department of transportation must be organized into offices, divisions, and districts as the director of the department of transportation determines necessary, and as provided in this section.

1. The director shall establish an office of motor vehicles to administer the department's regulatory authority over motor vehicle titling and registration, operator licensing and traffic safety, and motor carriers. Operating expenses for functions performed by the department under chapters 39-04 and 39-05 must be funded by appropriations from collections made under those chapters before deposit into the fund provided by section 54-27-19.
2. The director shall establish an office of state highways and engineering to administer the department's authority and responsibilities over the construction, maintenance, and repair of highways in this state, including the operation of district offices.
3. The director shall establish an office of transportation planning to administer the department's authority and responsibilities for planning all surface modes of transportation, budgeting, development of programs and projects, data collection and management, and research. Coordination must be established between the aeronautics commission planning section and the department of transportation office of planning for airport development as it pertains to surface access.
4. The director shall establish an office of management services in the department to provide for the employment of human resources, finance and inventory control, automation, and other administrative services.

SECTION 6. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 2 through 7 of this Act, according to chapter 28-32. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by this Act shall remain in effect until they are specifically amended or repealed by the department.

SECTION 7. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Legislative council - Authority to change references to new department of transportation. The legislative council is hereby authorized to delete, where appropriate, references to the highway department, highway commissioner, motor vehicle department, and registrar of motor vehicles, wherever they appear in the North Dakota Century Code or supplements thereto, and to replace each deleted reference with the department of transportation or the director of the department of transportation, as appropriate.

SECTION 8. AMENDMENT. Subsections 7 and 11 of section 24-01-01.1 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

7. "Commissioner" shall mean the ~~commissioner~~ director of the department of transportation of this state, highway department acting directly or through his authorized agents as provided in section 4 of this Act.
11. "Department" shall mean the highway department of transportation of this state as provided by section 3 of this Act.

SECTION 9. AMENDMENT. Section 24-02-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-13. Payment of estimates on contract or deposits in condemnation. Whenever any estimate or allowance for payment, except a final estimate or payment subsequent to a final estimate, is allowed, or granted, on a contract entered into by the department, or a deposit is to be made with the clerk of district court in a condemnation proceeding, and the estimate is vouchered by the department for presentation to the office of management and budget, instead of submitting the estimate to the contractor or clerk of district court for certification, the ~~chief engineer~~ director of the department or the chief engineer's director's authorized designee shall make the following certificate, in lieu of the certificate otherwise required by law, which shall be printed on the voucher or claim:

Estimate certificate. I hereby certify that the within estimate or claim is just and true, that the contractor herein named has rendered the services and furnished the material herein charged, that they are of the value claimed, that no part thereof has been paid, and that the foregoing estimate or claim is supported by a proper contract and bond on file in the department or that the purpose of the payment to a clerk of district court is pursuant to law and for the taking of property by condemnation.

Chief Engineer, State Highway Department
Director, Department of Transportation

After a certified estimate or deposit with a clerk of district court has been approved for payment by the ~~commissioner~~ director, the same shall be presented to the office of management and budget for payment. The office of management and budget thereupon shall prepare and issue a warrant therefor signed by the state auditor without submitting the voucher or claim to the office of the budget for examination and allowance. The foregoing procedure shall not apply to the final estimate or allowance to a contractor, nor to any estimate or allowance subsequent or supplemental to the final estimate, but the final estimate or supplemental allowance, shall conform to the provisions of law relative to the certification and approval of any other claim or demand; nor shall the procedure apply to payments to property owners involved in the taking of property in any condemnation proceeding.

SECTION 10. AMENDMENT. Section 24-03-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-03-03. Construction program. Not later than the fifteenth day of January of each year there shall be submitted to the ~~commissioner~~ director by

the chief highway engineer of the department a statement showing what improvements, structures, and construction work have been requested and proposed, and may be undertaken, by the department. Such statement shall set forth the estimated quantities and the estimated unit cost of each class, type, and nature, together with the totals thereof for each and every project or improvement which may be made, and the totals of all such projects or improvements, and the average quantities and unit costs for all such projects or improvements. The commissioner director shall examine the same and shall proceed to adopt a construction program, wherein shall be determined what projects and improvements shall be undertaken by the said department during the ensuing construction season, and the order of priority thereof. Insofar as practicable, priority shall be given first to the improvement of the so-called primary system of the state highway system, and the total estimated cost of such construction program shall not exceed the total estimated income or allowance granted or set aside for construction purposes in the departmental budget. Nothing herein, however, shall prevent the commissioner director from adding to, amending, revising, or reducing from time to time and as circumstances may warrant, such construction program. The commissioner director shall proceed to advertise for bids for contracts at such time as he may elect, and in the manner and for the purposes in this chapter provided.

SECTION 11. AMENDMENT. Section 24-16-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-16-02. Definitions.

1. "Junk" shall mean old or scrap paper, copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.
2. "Automobile graveyard" shall mean any establishment or place of business or location which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, abandoned, ruined or dismantled motor vehicles, motor vehicle parts or machinery of all types.
3. "Junkyard" shall mean a business establishment or a place which is maintained, operated, or used for placing, storing, keeping, buying, or selling junk, or for the maintenance, use or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.
4. "Commissioner" shall ~~include~~ mean the North Dakota director of the department of transportation of this state highway commissioner or his authorized agents as provided by section 4 of this Act.
5. "Highway" shall mean any highway as defined in subsection 42 of section 24-01-01.1.

SECTION 12. AMENDMENT. Section 24-17-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-17-02. Definitions.

1. "Commissioner" shall mean the North Dakota director of the department of transportation of this state highway commissioner or his authorized agents as provided in section 4 of this Act.
2. "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.
3. "Maintain" means to exist.
4. "Outdoor advertising" means a sign, display, or device of any kind or character including statuary, erected or maintained for outdoor advertising purposes, upon which any poster, bill, printing, painting, or other advertisement of any kind whatsoever may be placed for advertising purposes and shall include but not be limited to any card, cloth, paper, metal, painted, or wooden sign of any character placed for outdoor advertising purposes, on or affixed to the ground or any tree, wall, bush, rock, fence, building, structure, or thing, either privately or publicly owned. The terms "sign, display, or device" comprehend all forms of outdoor advertising and the use of one such term in this chapter includes all forms of outdoor advertising.
5. "State highway system" shall mean the state highway system as defined in subsection 42 of section 24-01-01.1.

SECTION 13. AMENDMENT. Subsections 8, 12, and 13 of section 39-01-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

8. "Commissioner" means the commissioner director of the North Dakota state highway department of transportation of this state, acting directly or through his authorized agents as provided by section 4 of this Act.
12. "Department" means the motor vehicle department of transportation of this state as provided by section 3 of this Act.
13. "Director" means the director of the division of public safety department of transportation of this state as provided by section 4 of this Act.

SECTION 14. AMENDMENT. Subsection 1 of section 39-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Commissioner" means the director of the department of transportation of this state highway commissioner of the state of North Dakota as provided by section 4 of this Act, acting directly or through his authorized agents.

SECTION 15. AMENDMENT. Subsection 7 of section 39-24-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. "Registrar" means the registrar of motor vehicles director of the department of transportation of this state as provided in chapter 39-02 section 4 of this Act.

SECTION 16. AMENDMENT. Subsection 2 of section 49-17.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Department" means the ~~state highway~~ department of transportation of this state as provided in section 3 of this Act.

* SECTION 17. AMENDMENT. Section 49-18-41.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-41.1. Interstate carrier registration and identification. The public service commission is authorized to ~~collect~~ assess a seven dollar per vehicle fee as provided by rule for the registration and identification of interstate motor carriers operating within this state. The fee shall not exceed the maximums provided for by the laws of the United States. The collection of this fee and issuance of identification stamps must be performed by the director of the department of transportation, who shall act as the agent of the public service commission and be subject to the rules adopted by the commission under this section.

SECTION 18. AMENDMENT. Subsection 1 of section 54-06-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The following executive and administrative officers and departments shall submit to the governor and the office of management and budget reports covering their operations for the two preceding fiscal years, except as otherwise provided by law, not later than the first day of December each year after the regular session of the legislative assembly:
 - a. Secretary of state.
 - b. State auditor.
 - c. Commissioner of insurance.
 - d. Attorney general.
 - e. Commissioner of agriculture.
 - f. Superintendent of public instruction.
 - g. State tax commissioner.
 - h. Public service commission.
 - i. State board of higher education.
 - j. Director of institutions.
 - k. ~~Highway commissioner~~ Department of transportation.
 - l. State department of health and consolidated laboratories.
 - m. Department of human services.

* NOTE: Section 49-18-41.1 was also amended by section 1 of House Bill No. 1259, chapter 573.

- n. Workers compensation bureau.
- o. Director of the office of management and budget.
- p. State treasurer.
- q. Commissioner of labor.

SECTION 19. AMENDMENT. Subsection 1 of section 54-27-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Sixty-three percent of such moneys shall be transferred monthly to the state ~~highway~~ department of transportation and placed in a state highway ~~department~~ fund.

SECTION 20. AMENDMENT. Subsection 6 of section 57-40.3-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Registrar" means the ~~registrar of motor vehicles who is the officer in charge of the motor vehicle~~ director of the department of transportation of this state as provided by section 4 of this Act, and who shall act as the agent of the state tax commissioner in administering the provisions of this chapter.

SECTION 21. A new subsection to section 57-43.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Director" means the director of the department of transportation.

SECTION 22. A new section to chapter 57-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cooperative agreements between states.

1. The director may enter into cooperative agreements with other states for exchange of information and auditing of users of motor fuels used in fleets of motor vehicles operated or intended to operate interstate. An agreement or amendment to an agreement is not effective until filed in writing with the director.
2. An agreement under this section may provide for determining the base state for users, users' records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining the uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of motor fuel taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.
3. The director may, as required by the terms of the agreement, forward to officers of another state any information in the director's or commissioner's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuels by any person. The director may disclose to officers

of another state the location of officers, motor vehicles, and other real and personal property of users of motor fuels.

4. An agreement may provide for each state to audit the records of persons based in the state, to determine if the motor fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the state, to each state in which the person has taxable use of motor fuels. For persons not based in this state and who have taxable use of motor fuel in this state, the director or the commissioner may serve the audit findings received from another state, in the form of an assessment, on the person as though an audit was conducted by the director or the commissioner.
5. Any agreement entered under this section does not preclude the director or the commissioner from auditing the records of any person covered by the provisions of this chapter.
6. The provisions of any agreement entered into under this section prevail over any conflicting rules adopted by the director or the commissioner.

SECTION 23. A new subsection to section 57-43.2-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Director" means the director of the department of transportation.

SECTION 24. A new section to chapter 57-43.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cooperative agreements between states.

1. The director may enter into cooperative agreements with other states for exchange of information and auditing of users of special fuels used in fleets of motor vehicles operated or intended to operate interstate. An agreement or amendment to an agreement is not effective until filed in writing with the director.
2. An agreement under this section may provide for determining the base state for users, users' records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining the uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of special fuel taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.
3. The director may, as required by the terms of the agreement, forward to officers of another state any information in the director's or commissioner's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of special fuels by any person. The director may disclose to officers of another state the location of officers, motor vehicles, and other real and personal property of users of special fuels.

4. An agreement may provide for each state to audit the records of persons based in the state, to determine if the special fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the state, to each state in which the person has taxable use of special fuels. For persons not based in this state and who have taxable use of special fuel in this state, the director or the commissioner may serve the audit findings received from another state, in the form of an assessment, on the person as though an audit was conducted by the director or the commissioner.
5. Any agreement entered under this section does not preclude the director or the commissioner from auditing the records of any person covered by the provisions of this chapter.
6. The provisions of any agreement entered into under this section prevail over any conflicting rules adopted by the director or the commissioner.

SECTION 25. REPEAL. Sections 24-02-01, 24-02-02, 24-02-03, 24-02-04, 24-02-05, 24-02-06, 24-02-38, 39-02-01, 39-02-02, 39-02-04, and subsection 14 of section 39-01-01 of the North Dakota Century Code are hereby repealed.

SECTION 26. APPROPRIATION. All moneys appropriated by the fifty-first legislative assembly to the governmental agencies and functions listed in section 3 of this Act are hereby deemed appropriated to the department of transportation for the period beginning January 1, 1990, and ending June 30, 1991. The director of the office of management and budget shall transfer funds and accounts accordingly. All funds previously dedicated by statute or the constitution of this state to specific transportation functions covered by this Act shall continue to be appropriated and used for those dedicated purposes.

SECTION 27. EFFECTIVE DATE. This Act becomes effective on January 1, 1990.

Approved April 28, 1989
Filed April 28, 1989

AGRICULTURE

CHAPTER 73

HOUSE BILL NO. 1109
(Committee on State and Federal Government)
(At the request of the State Auditor)

STATE FAIR ASSOCIATION AUDIT REPORTS

AN ACT to amend and reenact section 4-02.1-18 of the North Dakota Century Code, relating to audits of the state fair association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-02.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02.1-18. ~~State auditor to examine premiums—~~ Certified audit of state fair association. It shall be the duty of the state auditor to biennially audit the general fund moneys appropriated to the North Dakota State Fair Association and to report thereon to the governor and to the legislative audit and fiscal review committee. The state fair association shall submit annually to the governor and the legislative audit and fiscal review committee an audit report prepared by a certified public accountant based upon an audit of all records and accounts of the association.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 74

HOUSE BILL NO. 1328
(Representatives Martin, R. Anderson, Kolbo)
(Senators Maixner, Richard, Stromme)

RESERVATION YOUTH ACHIEVEMENT DAYS

AN ACT to amend and reenact section 4-08-10.1 of the North Dakota Century Code, relating to achievement days held by extension agents on Indian reservations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-08-10.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-08-10.1. Achievement days - Premiums - Report of county extension agent. The county extension agent of each organized county ~~of or tribal government within the state~~ conducting boys' and girls' achievement days, upon a voucher duly executed by the county extension agent and filed with the office of management and budget, shall receive out of moneys appropriated for boys' and girls' clubwork an amount not to exceed five hundred dollars each year to be used exclusively for the payment of premiums at the boys' and girls' achievement days. Within thirty days following the boys' and girls' achievement days, the county extension agent shall file with the office of management and budget a full and complete itemized statement showing the disposition of the premium payments, and any balance not expended must be remitted to the state treasurer and placed to the credit of the general fund.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 75

SENATE BILL NO. 2111
(Tallackson)

SEED SALES AND SEED COMMISSION

AN ACT to create and enact a new section to chapter 4-09 and two new subdivisions to subsection 1 of section 4-09-14 of the North Dakota Century Code, relating to prohibitions regarding the sale of seeds; and to amend and reenact sections 4-09-01, 4-09-02, subsections 2 and 3 of section 4-09-03, sections 4-09-06, 4-09-07, 4-09-08, 4-09-10, subsection 2 of section 4-09-15, sections 4-09-16, 4-09-17, 4-09-18, 4-09-20, subsections 6 and 7 of section 4-25-02, and section 4-25-04 of the North Dakota Century Code, relating to seed and the state seed department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Advertisement" means any representation, other than representations made on labels, ~~made in any manner or by any means which relate relates~~ to seed ~~within the scope of this chapter~~.
2. "Agent" ~~or its plural form~~, when used in connection with the state seed commissioner, means the commissioner's deputies, inspectors, analysts, specialists, and any other aides, agents, and employees of the commissioner and the seed department, when they are acting officially for the commissioner or performing any duty or duties as provided in this chapter or in the regulations rules duly ~~made thereunder~~ adopted under this chapter.
3. "Agricultural seeds" means the seeds of grass, forage, cereal, fiber, oil crops, Irish potato seed tubers, and any other kind of seeds commonly recognized within this state as agricultural seeds, lawn seeds, and mixture of such seeds.
4. "Commissioner" means the state seed commissioner.
5. "Foundation seed", "registered seed", and "certified seed" means seed that has been produced and labeled in accordance with the procedures and in compliance with the rules of an officially recognized seed-certifying agency.
6. "Germination" means the percentage of seed capable of producing normal seedlings under ordinarily favorable conditions as determined by methods prescribed under the rules established by the

association of official seed analysts, but not including seed which produces weak, malformed, or obviously abnormal sprouts.

6- 7. "Hard seed" means the percentage of seed which, because of hardness or impermeability, does not absorb moisture or germinate under prescribed test but remains hard during the period prescribed for germination of the kind of seed concerned as determined by methods prescribed under the rules established by the association of official seed analysts.

7- 8. "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:

- a. Two or more inbred lines;
- b. One inbred or a single cross with an open pollinated variety; or
- c. Two varieties or species, except open pollinated varieties of corn (*Zea mays mays*).

The second generation or subsequent generations from such crosses must not be regarded as hybrids. Hybrid designations must be treated as variety names.

8- 9. "Kind" means one or more related species or subspecies which singly or collectively is known by one common name, such as corn, oats, alfalfa, timothy.

9- 10. "Labeler" means the person who furnishes the information required in sections 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2.

10- 11. "Labeling" means all labels and other written, printed, or graphic representation in any form ~~whatsoever~~ accompanying or pertaining to any seed, whether in bulk or in containers, including representations on invoices.

11- 12. "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion or bag of which is uniform, within permitted tolerances, for the factors which appear in the labeling.

12- 13. "Noxious weed seeds" means the seeds of either of the following classifications:

- a. "Prohibited noxious weed seeds" means the seeds of perennial weeds which reproduce by seed or spread by underground roots, stems, and other reproductive parts and which, when established, are highly destructive and difficult to control by ordinary good cultural practices. ~~Included herein are including~~ the seeds of leafy spurge (*euphorbia esula* L.), field bindweed or creeping jenny (*convolvulus arvensis* L.), Canada thistle (*cirsium arvense* L.), perennial sow thistle (*sonchus arvensis* L.), Russian knapweed (*centaurea picris* pall), absinth wormwood (*artemisia absinthim*), hemp (*cannabis sativa*), musk thistle (*carduus nutans*), spotted knapweed (*centaurea maculosa* Lam) and perennial pepper grass hoary cress (*cardaria draba* L. ~~cardaria repens schrenk~~, *cardaria pubescens* meyer).

- b. "Restricted noxious weed seeds" means the seeds of weeds which are highly objectionable in fields, lawns, and gardens, but which can be controlled by good cultural practices or other means, including the seeds of dodder (*Cuscuta* species), wild mustard (*Sinapis arvensis* syn. *brassica kaber*), field pennycress (*Thlaspi arvense*), hedge bindweed (*Convolvulus sepium*), wild oats (*Avena fatua*), and quackgrass (*Agropyron repens* L. Beauv.).
- ~~13-~~ 14. "Official seed certifying agency" means:
- An agency authorized under the laws of a state, territory, or possession to officially certify seed which has standards and procedures approved by the United States secretary of agriculture to assure the genetic purity and identity of the seed certified; or
 - An agency of a foreign country determined by the United States secretary of agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under subdivision a.
- ~~14-~~ 15. "Person" means any individual, partnership, corporation, company, society, or association.
- ~~15-~~ 16. "Pest" means any invertebrate animal, pathogen, parasitic plant, or similar organism causing or capable of causing injury or damage to any plant or part of a plant or any processed, manufactured, or other product of a plant.
- ~~16-~~ 17. "Phytosanitary certificate" means a document issued or authorized by the commissioner indicating that the seed or tubers were inspected and considered to be free from quarantine pests and practically free from injurious pests according to the sanitary requirements of the importing country.
- ~~17-~~ 18. "Pure seed" means agricultural and vegetable seed, exclusive of inert matter, and all other seed not of the kind or variety being considered.
- ~~18-~~ 19. "Record" means all information relating to lot identification, source, origin, variety, amount, processing, testing, labeling, distribution, and file sample of the seed.
- ~~19-~~ "Registered seed" and "certified seed" means seed that has been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of an officially recognized seed-certifying agency.
20. "Restricted noxious weed seeds" means the seeds of weeds which are highly objectionable in fields, lawns, and gardens, but which can be controlled by good cultural practices or other means. Included herein are the seeds of dodder (*Cuscuta* species), wild mustard (*Sinapis arvensis* syn. *brassica kaber*), frenchweed (*Thlaspi arvense*), hedge bindweed (*Convolvulus sepium*), wild oats (*Avena fatua*), and quack grass (*Agropyron repens* L. Beauv.); provided, however, that the commissioner may, through promulgation of

regulations; add to or delete from the list of seeds included under either classification in subsection 12 and this subsection whenever he finds, after due consideration, that such additions or deletions are within the respective classifications.

- ~~21-~~ "Seed department" means the seed department of ~~the~~ this state of North Dakota.
- ~~22-~~ 21. "Seizure" means the legal process carried out by court order against a definite amount of seed.
- ~~23-~~ 22. "Stop-sale" means an administrative order provided by law restraining the sale, use, disposition, and movement of a definite amount of seed.
- ~~24-~~ 23. "Treated" means that the seed has received an application of a ~~substance or process~~ seed protectant pesticide which ~~substance or process~~ is designed to reduce, control, or repel certain disease organisms, insects, or other pests attacking such seeds or seedlings growing therefrom.
- ~~25-~~ 24. "Variety" means a subdivision of a kind characterized by growth, yield, plant, fruit, seed, or other characteristic by which it can be differentiated from other plants of the same kind.
- ~~26-~~ 25. "Vegetable seeds" means the seeds of those crops which are grown in gardens and on truck farms, and which are generally known and sold under the name of vegetable seeds within this state.
- ~~27-~~ 26. "Weed seeds" means the seeds of all plants generally recognized as weeds within this state, including noxious weed seeds.

SECTION 2. AMENDMENT. Section 4-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-02. Seed department - Offices and laboratories. There must be maintained a state department ~~of the state~~ to be known as the "seed seed department of the state of North ~~Dakota"~~ Dakota. Its headquarters, main offices, and other principal operating facilities and equipment must be located at the North Dakota state university of agriculture and applied science. The state seed ~~commissioner, with the approval of the commissioner of agriculture,~~ commission may locate and establish branch offices and laboratories at such other locations in this state as in his the commissioner's judgment are necessary to carry out properly and effectively the provisions of this or other chapters in which he the seed department is charged with duties and responsibilities.

SECTION 3. AMENDMENT. Subsections 2 and 3 of section 4-09-03 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. The state seed commission; ~~hereafter referred to as commission;~~ must be a seven-member board consisting of the president a representative of the North Dakota crop improvement association, the president a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota

potato council selected by the North Dakota potato council, ~~the highest elected officer~~ a representative of the red river valley potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association who also operates a state-approved seed conditioning plant selected by the board of directors of the North Dakota grain dealers association, and the commissioner of agriculture, or the commissioner's designee, who shall serve as chairman. The dean of the ~~school~~ college of agriculture of the North Dakota state university of agriculture and applied science is an advisory, nonvoting member of the commission.

3. The commission shall meet during the months of November and June of each calendar year and may hold special meetings at the call of the chairman or by request of any two members of the commission. ~~The secretary of the commission must be elected for a term of one year at the June meeting by a majority vote of all members of the commission.~~ Members of the commission must be reimbursed for mileage and travel as specified in section 54-06-09 and expenses as specified in section 44-08-04 for attendance at regular and special meetings. A commission member unable to attend a meeting of the commission may be represented by a proxy who has written authorization from such commission member.

SECTION 4. A new section to chapter 4-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Noxious weed seeds - Classifications. The commissioner may, by rule, add to or delete from the lists of noxious weed seeds defined in section 4-09-01.

SECTION 5. AMENDMENT. Section 4-09-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-06. Examination of seed by commissioner - Right of access to premises - Publication of reports - "Stop-sale" order. The commissioner, ~~either by himself or his~~ or the commissioner's agents, shall inspect, examine, make analysis of, and test any seed sold, offered, or exposed for sale, held, or distributed within this state for ~~sowing or~~ planting purposes, at such time and place, and to such extent, as ~~he~~ the commissioner may determine. The commissioner and ~~his~~ the commissioner's agents, at all reasonable times, have the right of free access to the premises or structures controlled, owned, or operated by any person who may be, or whose seed, or the seed ~~he~~ the person may be holding or storing or transporting, may be, investigated or proceeded against, and to any premises or structures or any kind of vehicle or conveyance where any seed may be located or in the process of transportation within the state, when not prohibited by interstate commerce laws and ~~regulations~~ rules, for the purpose of inspecting, examining, and sampling any seed or seed plants. Any person involved in any way in the handling, transportation, storage, buying, or selling of seed shall cooperate with the commissioner and ~~his~~ the commissioner's agents and shall render all possible assistance to aid the commissioner and ~~his~~ the commissioner's agents in the carrying out and enforcement of ~~the provisions~~ of this chapter and the ~~regulations duly made thereunder~~ rules adopted under this chapter. The commissioner may publish, or cause to be published, the results of the examination, analyses, and tests of any samples of seed or

mixtures of seed, together with any information ~~he~~ the commissioner may deem advisable.

The commissioner or ~~his~~ the commissioner's agent may issue and enforce a written or printed "stop-sale" order to the owner or custodian of any lot of agricultural or vegetable seed which the commissioner or ~~his~~ the commissioner's agent finds to be in violation of any of the provisions of this chapter, which order shall prohibit further sale, processing conditioning, and movement of such seed until the commissioner or ~~his~~ the commissioner's agent has evidence that the law has been complied with and a release from such "stop-sale" order has been issued. Provided, that in respect to seeds which have been denied sale, processing conditioning, and movement as provided in this paragraph section, the owner or custodian of such seeds has the right to appeal from ~~said~~ the order to a court of competent jurisdiction in the locality in which the seeds are found, praying for a judgment as to the justification of such the order and for the discharge of such the seed from the order prohibiting the sale, processing conditioning, and movement in accordance with the findings of the court; and provided further, that the provisions of this paragraph may. This section does not be construed as limiting limit the right of the commissioner or ~~his~~ the commissioner's agent to proceed as authorized by other sections of this chapter.

SECTION 6. AMENDMENT. Section 4-09-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-07. Official laboratories - Location - Certificates and reports - Publication. The ~~state seed~~ commissioner, subject to the approval and supervision of the ~~state seed~~ commission described in section 4-09-03, shall provide and maintain under ~~his~~ the commissioner's direction necessary laboratories and facilities properly equipped to make analyses, tests, and variety and disease determinations of seeds and plants, and to effect such other results and work as may be necessary to carry out the provisions of this chapter. For these purposes, ~~he~~ the commissioner may utilize such premises, space, and equipment at the North Dakota state university of agriculture and applied science as may be assigned to ~~him~~ the commissioner by the state board of higher education. The ~~state seed~~ commissioner, subject to the approval of the state board of higher education, shall permit the facilities and services of the official laboratories to be used by such the university at convenient times. When a report or certificate relating to the findings and determinations made in a laboratory is issued and signed by the ~~state seed~~ commissioner or a duly authorized agent, it must be accepted as prima facie evidence of the statements therein contained, but the ~~state seed~~ commissioner or ~~his~~ the commissioner's analysts are subject to court order for a review of findings as set forth by such certificates or reports. The ~~state seed~~ commissioner may publish reports or explanatory material concerning seed or inspections, tests, analyses, or other determinations made by ~~him~~ the commissioner and may enlarge the same with material setting forth the value or condition of the seed stocks which are produced in this state or in which North Dakota persons are interested. ~~He~~ The commissioner also may publish lists of registered or certified seed.

SECTION 7. AMENDMENT. Section 4-09-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-08. Public laboratory service - Free tests - Fees for additional tests. Any resident of this state may send samples of cereals, flax,

sunflower, alfalfa, soybean, and edible bean seed to the commissioner for ~~examination, analysis, or~~ germination tests. No more than three samples per year per person ~~shall~~ may be examined and reported on free of charge. The commissioner, by rule, ~~shall through promulgation of regulations~~ prescribe the time of year when seed samples will be accepted for free tests, the fees which will apply to samples submitted by any resident of the state in excess of three, and the fees which will be charged for all other laboratory tests and services.

SECTION 8. AMENDMENT. Section 4-09-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-10. Labeling requirements for agricultural seed. Each container of agricultural seed which is sold, offered for sale, exposed for sale, transported for sale, or held in storage with the intent to sell for ~~sowing~~ planting purposes within this state must bear thereon or have attached thereto in a conspicuous place, or there must be properly delivered with bulk sales or movements of said seed, a plainly written or printed label or tag in the English language giving the following information, which statement may not be modified or denied in the labeling or on another label attached to the container:

1. a. In seeds of wheat, durum, barley, oats, rye, soybeans, edible beans, and flax the commonly accepted name of the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage by weight of each. ~~If the variety is unknown that fact must be stated.~~
 - b. In all other seeds not named in subdivision a ~~of subsection~~ + the commonly accepted name of the kind or the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage of weight of each.
 - c. When more than ten percent of the whole consists of an aggregate of agricultural seed components, each present in an amount not exceeding five percent of the whole, each component in excess of one percent of the whole must be named together with the percentage by weight of each. All components must be listed in the order of their predominance. Where more than one component is named, the word "mixture", or the word "mixed", must be shown conspicuously on the label.
2. Lot number or other lot identification.
3. Origin, state or foreign country where grown. If the origin is unknown, that fact must be stated.
4. Percentage by weight of all weed seeds, ~~which may not exceed one percent.~~
5. The name and rate of occurrence per pound [453.59 grams] of each kind of restricted noxious weed seeds present, if the restricted noxious weed seeds are present singly or collectively in amounts:
 - a. In seeds of grasses and small seeded legumes, in excess of thirteen seeds per pound [453.59 grams]; and

- b. In other agricultural seeds including the cereals, oil seed crops, millets, and seeds of similar size, in excess of five seeds per pound [453.59 grams].
6. Percentage by weight of agricultural seed which may be designated as crop seed, other than those required to be named on the label.
7. Percentage by weight of inert matter.
8. For each agricultural seed:
 - a. Percentage of germination, exclusive of hard seed. Total germination and hard seed may be stated as such, if desired.
 - b. Percentage of hard seed, if present. Total germination and hard seed may be stated as such, if desired.
 - c. The calendar month and year the test was completed to determine such percentages.
9. The full name and address of the person who labeled said seed, or who sells, offers for sale or exposes said seed for sale within this state.
10. ~~The relative maturity in number of days, in the case of hybrid corn.~~
- ~~11.~~ For treated seeds as defined in this chapter, for which a separate label may be used:
 - a. A word or statement indicating that the seed has been treated;
 - b. The commonly accepted, coined, chemical or abbreviated chemical (generic) name of the applied substance seed protectant pesticide; and
 - c. If the substance in the amount present with the seed is harmful to human or other vertebrate animals a caution statement such as "Do not use for food or feed or oil purposes". The caution for mercurials and similar toxic substances must be a poison statement or symbol.
- ~~12.~~ 11. That the seed container itself is a hermetically sealed container. ~~For the purposes of this subsection, the words "hermetically sealed container" have the meaning ascribed to them as defined by regulation promulgated rule adopted by the state seed commissioner.~~
- ~~13.~~ 12. A disease test result for seed borne diseases. For the purpose of this subsection the words "disease test result" have the meaning ascribed to them by regulations promulgated rules adopted by the state seed commissioner.

SECTION 9. AMENDMENT. Two new subdivisions to subsection 1 of section 4-09-14 of the North Dakota Century Code are hereby created and enacted to read as follows:

Such seed contains restricted noxious weed seeds in excess of ninety seeds per pound [453.59 grams].

The percentage by weight of all weed seeds in the seed exceeds one percent.

SECTION 10. AMENDMENT. Subsection 2 of section 4-09-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Grain ~~which that~~ is not intended for sowing planting purposes.

SECTION 11. AMENDMENT. Section 4-09-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-16. ~~Registered and certified~~ Certified seed. The commissioner shall:

1. Establish a seed ~~registration and certification~~ system for ~~North Dakota this state and make and promulgate~~ adopt rules ~~and regulations~~ governing application for service, acceptance of suitable seed stocks for the production of a foundation, registered, certified, or inspected crop, field inspection, bin inspections, harvesting, handling, storage, ~~cleaning~~, and grading conditioning, and preparation and handling of such seed for market.
2. Designate kinds, varieties, ~~strains~~, and names of seed stocks, and establish ~~the grades and~~ standards of quality, degree of disease infection, and amounts of any admixtures, foreign seeds, noxious weeds, or other weed seeds that are allowed in any lot or stock of seed, which may be or become eligible for field ~~registration inspection~~ or for ~~registration or final~~ certification of the seed crop.
3. Prescribe all labels, seals, certificates, or similar statements that must be used for, or in relation to, any seed, or the various kinds, ~~grades~~, and qualities grown, handled, stored, held for sale, sold, or offered or exposed for sale in ~~North Dakota this state~~ as "breeders", "foundation", "registered", "certified", "~~elite~~", "~~foundation seed~~", or "~~inspected seed~~" "inspected" seed, and shall specify what ~~written or printed~~ words, terms, or figures such labels, seals, certificates, or the containers of such seed must bear.
4. Cooperate with the managers of any seed ~~cleaning, seed treating, or processing~~ conditioning plants, or any commercially established seed firm, or any ~~individual or~~ person within or outside of the state having proper facilities and equipment to store, ~~clean, grade, process~~ condition, and otherwise handle seed which is eligible for ~~registration or~~ certification, for the purposes of handling and marketing "~~breeders~~", "~~foundation~~", "~~registered~~", "~~certified~~", "~~pedigreed~~", "~~elite~~", "~~foundation seed~~" or "~~inspected seed~~" "inspected" seed.
5. Cooperate in the selection, testing, and growing of seed for ~~registration and~~ certification purposes and in the arrangement for

increase and distribution of improved and of foundation seed stocks suitable for the production of ~~registered~~ and certified seed.

6. Establish an equitable schedule of fees and charges, which must be uniform throughout the state, for inspecting, testing, analyzing, and recording such seed, and for other work and duties incident to the growing, handling, marketing, ~~registering~~, and certifying of North Dakota seed, and shall collect all such fees and charges.

SECTION 12. AMENDMENT. Section 4-09-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-17. Certified seed - Regulations governing labeling and representing. ~~No seed~~ Seed grown in North Dakota, or grown elsewhere and transported into this state, which is sold, offered or exposed for sale, stored, transported, or distributed, or held with intent to sell or plant the same, may not be represented, advertised, labeled, or characterized in any way, either orally or in writing, with or by the use of the term "breeders", "foundation", "registered", "certified", "pedigreed", "elite", "foundation seed", or "inspected seed" "inspected" seed, or any term or terms conveying a meaning substantially equivalent to the meaning of any of said terms, without the approval and authorization of the commissioner, who may ~~make~~ adopt such rules and regulations as ~~he~~ the commissioner finds necessary for the proper regulation and protection of the ~~pure seed growing and marketing~~ certified seed industry.

SECTION 13. AMENDMENT. Section 4-09-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-18. ~~Registered and certified~~ Certified seed standards - Fees. The rules, requirements, and fees for certification of crop seeds, other than potatoes, must be those prescribed and set forth in the state seed department bulletin number 51, published in March 1945, and subsequent announcements and revisions ~~thereof~~ of the bulletin.

The rules, requirements, and fees for seed potato certification must be those prescribed and set forth in the state seed department bulletin number 49 as revised in August 1950, and subsequent announcements and revisions ~~thereof~~ of the bulletin.

* SECTION 14. AMENDMENT. Section 4-09-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-20. Fees and collections - Disposition. All moneys arising from the collection of fees and other charges under ~~the provisions of~~ this chapter must be deposited by the ~~state seed~~ commissioner with the state treasurer and credited to the seed department revolving fund, and must be disbursed, within the limits of legislative appropriations ~~therefrom~~, upon vouchers signed by the ~~state seed~~ commissioner and warrant-checks prepared by the office of management and budget, ~~after approval of such expenditures by the office of the budget~~. The state treasurer shall, at the direction of the commission, provide for the investment of available moneys from the revolving fund. The state treasurer shall deposit income from the investment of the moneys in the seed department revolving fund.

* NOTE: Section 4-09-20 was also amended by section 2 of House Bill No. 1021, chapter 20.

SECTION 15. AMENDMENT. Subsections 6 and 7 of section 4-25-02 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

6. The kind and variety of seed for wheat, durum, barley, oats, rye, flax, soybeans, and edible beans. If variety is unknown that fact must be stated.
7. The grade or quality class of the seed to be delivered, the grade in the case of registered or certified seed and if the seed is not registered or certified, then the minimum germination and seed purity percentages must be stated. If the seed is registered or certified the words "breeders", "foundation", "registered", or "certified" as the case may be, must be shown in addition to the grade.

SECTION 16. AMENDMENT. Section 4-25-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-25-04. Repurchase contracts - Bonding requirement for nonresident seed dealers. Any nonresident person or his that person's agent shall pay an annual license fee of twenty-five dollars to the state seed commissioner before engaging in the business of selling any agricultural grain or grass seed or and entering into any contract with a purchaser whereby he that person agrees to purchase or retains an option to purchase the grain or grass seed or feed grain produced. The license is renewable annually on January first of each year. In addition, at At the time of making application applying for such a license, the applicant shall furnish a corporate surety bond to be approved by the commissioner in the penal sum of ten thousand dollars running to the state of North Dakota for the use and benefit of any such purchaser of seed or seller under a repurchase contract or option, who may have a claim for relief against any seller or repurchaser who fails to comply with the terms of the purchase or repurchase contract. All fees collected under this section must be disposed of deposited in the manner provided in section 4-09-20 seed department revolving fund.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 76

HOUSE BILL NO. 1485
(Representatives Watne, Nowatzki)
(Senator Nalewaja)

OILSEED COUNCIL

AN ACT to amend and reenact sections 4-10.2-01, 4-10.2-02, 4-10.2-03, 4-10.2-08, 4-10.2-09, 4-10.2-10, subdivision c of subsection 1 of section 4-14.2-02, sections 4-24-07, and 4-24-09 of the North Dakota Century Code, relating to changing the name and membership of the sunflower council and assessments relating to sunflower, safflower, rapeseed or canola, crambe, and flax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.2-01. Legislative policy. It is hereby declared that the production, development, marketing, and promotion of sunflowers in North Dakota sunflower, safflower, rapeseed or canola, crambe, and flax is important to the general welfare of the people of North Dakota this state; that it is in the public interest that better methods of production, processing, and marketing of sunflowers sunflower, safflower, rapeseed or canola, crambe, and flax and that advertising and promoting of sunflowers grown in North Dakota sunflower, safflower, rapeseed or canola, crambe, and flax be fostered, encouraged, developed, and improved so the sunflower industry, safflower, rapeseed or canola, crambe, and flax industries within the state, the people directly or indirectly employed by said industry these industries and the people of North Dakota this state should be benefited thereby, the accomplishment of which requires and demands the establishment of a North Dakota sunflower council for the purposes and with the objectives of contributing to the stabilization and improvement of the agricultural economy of this state. This chapter must ~~does not be construed to~~ abrogate or limit in any way the rights, powers, duties, and functions of the office of the commissioner of agriculture or any other agency of the state, but is supplementary thereto and in aid and cooperation therewith; nor ~~shall does~~ this chapter be construed to authorize the North Dakota sunflower council to engage in competitive business enterprises, it being the intended purpose of this chapter that the council, through research and advertising, shall promote North Dakota grown sunflowers sunflower, safflower, rapeseed or canola, crambe, and flax produced or marketed for sale in this state.

SECTION 2. AMENDMENT. Section 4-10.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.2-02. Definitions. Whenever used in this chapter:

1. "Commissioner" means commissioner of agriculture or the commissioner's designated representative.

2. "Council" means the North Dakota sunflower oilseed council.
3. "Designated handler" means any person who initially places sunflowers sunflower, safflower, rapeseed or canola, crambe, or flax, whether as an owner, agent, or otherwise, into the channels of trade and commerce, or who is engaged in the processing of sunflowers sunflower, safflower, rapeseed or canola, crambe, or flax into any form. A grower selling his the grower's unharvested sunflowers sunflower, safflower, rapeseed or canola, crambe, or flax, or delivering his sunflowers the grower's sunflower, safflower, rapeseed or canola, crambe, or flax from the farm on which they are produced to storage facilities, packing shed, or processing plant, within the state, is not considered to be a designated handler.
4. "Grower" means any person who plants, raises, and harvests sunflowers sunflower, safflower, rapeseed or canola, crambe, or flax from more than ten acres [4.05 hectares].
5. "Hundredweight" means a one hundred pound unit [45.36 kilograms] or a combination of packages making a one hundred pound unit [45.36 kilograms] or any shipment of sunflowers sunflower, safflower, rapeseed or canola, or crambe based on invoices or bills of lading records.
6. "Participating grower" means a grower who has not exempted himself from the payment of taxes assessments on sunflower, safflower, rapeseed or canola, crambe, or flax production under this chapter for a particular year, or a grower who is not exempt from the payment of taxes assessments on sunflower, safflower, rapeseed or canola, crambe, or flax production under this chapter.
7. "Person" means an individual, partnership, corporation, association, grower, cooperative, or any other business unit.
8. "Sunflowers" "Sunflower" means any and all varieties every variety of sunflowers sunflower harvested within the state.

SECTION 3. AMENDMENT. Section 4-10.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.2-03. North Dakota state sunflower oilseed council - Membership - Election - Term. There is hereby established a North Dakota sunflower oilseed council. The council is composed of one participating sunflower grower elected from each of the districts established in section 4-10.2-04, one participating safflower grower appointed by the governor, one participating rapeseed or canola grower appointed by the governor, one participating flax grower appointed by the governor, and one member appointed by the director of the agricultural experiment station. The members appointed by the governor must be selected from a list of at least three names for each industry submitted by the commissioner. The chairman of the council must be a member of the council elected by a majority vote of the council. The commissioner of agriculture is an ex officio member of the council. Every elected and appointed council member must be a citizen of the state and. Every elected member must be a bona fide resident of and participating sunflower grower in the district the member represents. The term of each elected member is three years and begins on April first of the

year of election, except that initially two members must be elected for a three-year term; two members must be elected for a two-year term; and two members must be elected for a one-year term as designated by the commissioner. The term of the representative for district seven must coincide with the term of the representative for district six. The term of each appointed member is three years and begins on April first of the year of the appointment, except that initially the flax grower member must be appointed for a three-year term, the member designated by the director of the agriculture experiment station and the safflower grower member must be appointed for a two-year term, and the rapeseed or canola grower must be appointed for a one-year term. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the remaining members of the council shall appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. ~~The first election must be held within forty-five days after April 9, 1977, and all~~ All elections ~~thereafter~~ must be conducted within seventy-five days prior to April first. No elected or appointed member of the council is eligible to serve more than ~~two~~ three consecutive three-year terms.

SECTION 4. AMENDMENT. Section 4-10.2-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.2-08. Tax Assessments levied. Effective July 1, 1977, an An assessment at the rate of ~~ten mills two cents~~ per hundredweight [45.36 kilograms] must be levied and imposed upon all ~~sunflowers~~ sunflower, safflower, rapeseed or canola, and crambe grown in the state or sold to a designated handler and an assessment at the rate of two cents per bushel [35.24 liters] must be levied and imposed upon all flax grown in the state or sold to a designated handler. This assessment is due upon any identifiable lot or quantity of ~~sunflowers~~ sunflower, safflower, rapeseed or canola, crambe, or flax.

A designated handler of ~~sunflowers~~ sunflower, safflower, rapeseed or canola, crambe, or flax shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the handler is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the designated handler, the names and addresses of the several persons constituting the firm partnership, and if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any ~~sunflowers~~ sunflower, safflower, rapeseed or canola, crambe, or flax until it has secured a certificate as required by this section.

Every designated handler of ~~sunflowers~~ sunflower, safflower, rapeseed or canola, crambe, or flax shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate of ~~ten mills per hundredweight [45.36 kilograms]~~ specified in this section by deducting the assessment from the purchase price of all ~~sunflowers~~ sunflower, safflower, rapeseed or canola, crambe, or flax subject to the assessment and purchased by the designated handler.

Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw ~~sunflowers~~ sunflower, safflower, rapeseed or canola, crambe, or flax, which may be examined by the council at all reasonable times. Every designated handler shall report to the council stating the quantity of ~~sunflowers~~ sunflower, safflower, rapeseed or canola, crambe, or flax received, sold, or shipped by it. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section shall accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of an account or accounts designated "~~sunflower~~ oilseed fund" to be used exclusively to carry out the intent and purposes of this chapter. Assessments collected from each crop must be used, for the purposes of this chapter, on each respective crop. However, for flax, emphasis should be given to utilize the assessment, except for that portion of the assessment necessary to administer the flax assessment, for nutritional and therapeutic research. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner of agriculture.

SECTION 5. AMENDMENT. Section 4-10.2-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.2-09. Nonparticipating growers - Refunds. Any grower subject to the assessment provided in this chapter may, within sixty days following such assessment or final settlement, make application by personal letter to the ~~sunflower~~ council for a refund application blank. Upon the return of said blank, properly executed by the grower, accompanied by a record of the assessment by the designated handler, the grower must be refunded the net amount of the assessment collected. If no request for refund has been made within the period prescribed above, then the grower is presumed to have agreed to such assessment. However, a grower, for any reason, having paid the ~~tax~~ assessment more than once on the same ~~sunflowers~~ sunflower, safflower, rapeseed or canola, crambe, or flax, upon furnishing proof of this to the council, is entitled to a refund of the overpayment.

The council, to inform the grower, shall develop and disseminate information and instructions relating to the purpose of the sunflower ~~tax~~, safflower, rapeseed or canola, crambe, and flax assessment and manner in which refunds may be claimed, and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of ~~sunflowers~~ sunflower, safflower, rapeseed or canola, crambe, and flax.

SECTION 6. AMENDMENT. Section 4-10.2-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.2-10. Referendum by growers. Whenever fifteen percent of the participating growers in an industry, with not more than fifty percent of the signatory parties from any one district, if applicable, as disclosed by the records of the council for the preceding year, petition the council, the council shall conduct a referendum among the participating growers of the state in that industry to determine whether they wish the legislative assembly to raise or lower the ~~tax~~ assessment imposed by section 4-10.2-08 for that industry. Such referendum must be conducted only among participating growers for such industry who have paid all ~~taxes assessed~~ assessments pursuant to this enactment for the preceding year, and the ballots must be prepared by the council and mailed to each participating

grower at least thirty days prior to the last date for filing ballots. In addition, each ballot must be accompanied by a notice to each participating grower:

1. Of the date of the filing of the petition by the growers for the referendum and the number of signatures contained thereon.
2. Of the date and place where the council will open and tabulate the ballots, which date must be not less than five days after the last date for filing the ballots.
3. Of the last date upon which ballots must be filed with the council, or postmarked if delivered to the council by mail.
4. That any participating grower may attend the meeting of the council at the time the ballots are opened and the votes tabulated.

If a majority of the participating growers in an industry voting upon the question are in favor of the proposed change, the council shall certify the result to the commissioner with the request that the commissioner prepare a bill to submit to the next legislative session to modify this chapter in conformity therewith. The results of the referendum are advisory only and the legislative assembly is not obligated to adopt legislation enacting the proposals contained in any referendum.

SECTION 7. AMENDMENT. Subdivision c of subsection 1 of section 4-14.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. A member of the North Dakota ~~sunflower~~ oilseed council selected by that council.

SECTION 8. AMENDMENT. Section 4-24-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-24-07. Agricultural promotion groups - Collocation and assistance. The North Dakota wheat commission, established under section 4-28-03; the North Dakota ~~sunflower~~ oilseed council, established under section 4-10.2-03; the North Dakota dairy promotion commission, established under section 4-27-04; and the North Dakota beef commission, established under section 4-34-03 shall ~~not later than July 1, 1983,~~ collocate their respective offices. Each of the collocated entities may share administrative and clerical services as well as equipment and supplies. The collocated offices may, by majority vote of the members of each council or commission, agree to furnish services to other statutory agricultural commodity promotion groups.

* SECTION 9. AMENDMENT. Section 4-24-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-24-09. Agricultural commodity assessments funds - Investment income allocation. The state treasurer, at the direction of the governing body of the respective agricultural commodity entity, shall provide for the investment of available moneys in the spud fund, ~~sunflower~~ oilseed fund, edible bean fund, barley fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, and the beef commission fund. The state treasurer, by rule, shall establish guidelines to be followed by the agricultural commodity organizations

* NOTE: Section 4-24-09 was also amended by section 1 of Senate Bill No. 2071, chapter 85.

regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services provided by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund. These moneys may be expended only within the limits of legislative appropriation.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 77

HOUSE BILL NO. 1519
(Representatives Solberg, Nowatzki, Shide)
(Senator Kinnoin)

BARLEY DISTRICTS

AN ACT to amend and reenact section 4-10.4-04 of the North Dakota Century Code, relating to the establishment of barley districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.4-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.4-04. Barley districts - Establishment. The following barley districts are established for the purpose of dividing the state into districts containing as nearly equal barley acres production as practicable:

1. State barley council district number one consists of the counties of Cavalier, Pembina, Walsh, Towner, and Ramsey.
2. State barley council district number two consists of the counties of Grand Forks, Nelson, Traill, Steele, Eddy, Foster, and Griggs.
3. State barley council district number three consists of the counties of Cass, Barnes, Richland, Ransom, LaMoure, Dickey, and Sargent.
4. State barley council district number four consists of the counties of Bottineau, Rolette, ~~Towner~~, McHenry, Pierce, Benson, Sheridan, Wells, ~~Eddy~~ Burleigh, Kidder, Stutsman, Emmons, Logan, and ~~Foster~~ McIntosh.
5. State barley council district number five consists of the counties of Renville, Burke, Divide, Williams, Mountrail, Ward, McLean, McKenzie, Dunn, Mercer, Oliver, ~~Burleigh~~, ~~Kidder~~, ~~Stutsman~~, ~~LaMoure~~, ~~Dickey~~, ~~McIntosh~~, ~~Logan~~, ~~Emmons~~, Sioux, Grant, Morton, Stark, Billings, Golden Valley, Slope, Hettinger, Adams, and Bowman.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 78

SENATE BILL NO. 2074
(W. Meyer)

HONEY PROMOTION FEES

AN ACT to amend and reenact section 4-12.1-03 of the North Dakota Century Code, relating to charging fees for items sold to promote honey.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-12.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.1-03. Fees - Special fund. The association may charge fees for items sold to promote honey. The state treasurer shall deposit all moneys received under this chapter in a special fund to be known as the honey fund. All moneys deposited in the honey fund must, subject to legislative appropriation, be expended by the commissioner for use pursuant to this chapter.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 79

SENATE BILL NO. 2154

(Committee on Agriculture)

(At the request of the Commissioner of Agriculture)

BEEKEEPERS

AN ACT to amend and reenact sections 4-12.2-01, 4-12.2-03, 4-12.2-04, 4-12.2-04.1, 4-12.2-06, 4-12.2-07, 4-12.2-10, 4-12.2-13, 4-12.2-14, 4-12.2-23, and subsection 3 of section 4-12.2-24 of the North Dakota Century Code, relating to licensing beekeepers and maintaining bees in this state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-12.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Apiary" means any place where one or more colonies of bees are kept.
2. "Beekeeper" means any person who owns, or leases, or manages one or more colonies of bees for pollination or the production of honey, beeswax, or byproducts, either for personal or commercial use and maintains the bees in this state.
3. "Bees" means honey producing insects of the genus *Apis*, including all life stages of such insects. The word "bees" as used in this chapter is not limited to the common honey bee but includes Africanized bees.
4. "Colony" means the hive and its equipment including bees, comb and honey, and brood.
5. "Commercial apiary" means an apiary where twenty-four or more colonies of bees are kept and all vacant locations established pursuant to sections 4-12.2-04 and 4-12.2-13.
6. "Commercial operator" means any beekeeper who maintains two hundred fifty or more than one hundred colonies of bees.
7. "Commissioner" means the commissioner of agriculture, or the commissioner's authorized representative.
8. "Department" means the department of agriculture.

9. "Disease" means American foulbrood or European foulbrood, sacbrood, bee paralysis, or any disease, parasite, or pest that affects bees or brood.
10. "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives, and also includes any containers of honey and wax which may be used in any apiary or in transporting bees and their products and apiary supplies, and those items used in the operation of a honey house.
11. "Hobby operator" means any beekeeper who maintains one hundred or fewer colonies of bees.
12. ~~"Honey house" means any place in which honey is extracted, processed, or handled.~~
- ~~+3-~~ 13. "Noncommercial apiary" means an apiary where twenty-three or fewer colonies of bees are kept.
- ~~+4-~~ 13. "Pollination location" means an apiary established pursuant to section 4-12.2-10.
- ~~+5-~~ 14. "Property owner" means the person, including a lessee, who has actual use and exclusive possession of the land. However, any person leasing land for the primary purpose of establishing an apiary thereon is not a property owner within the meaning of this definition.
- ~~+6-~~ 15. "Property owner location" means an apiary established pursuant to section 4-12.2-11.
- ~~+7-~~ Repealed by S.L. 1987, ch. 85, § 7.

SECTION 2. AMENDMENT. Section 4-12.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-03. Emergency orders and rules. Where an emergency exists requiring immediate action, the commissioner may, without notice or hearing,

- ~~+1-~~ issue, issue an order or rule reciting the existence of the emergency and requiring that necessary action be taken to meet the emergency; ~~or~~
- ~~2-~~ Adopt emergency rules which recite the existence of an emergency and provide a solution to the emergency.

An emergency order or emergency rule is effective immediately, but may ~~is not~~ be effective for more than ninety days.

SECTION 3. AMENDMENT. Section 4-12.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-04. Beekeeper's license required.

1. A beekeeper may not maintain bees in this state unless the beekeeper has a valid beekeeper's license. Annually, on or before

the first day of May in each year, each beekeeper shall apply to the commissioner, on a form to be furnished by the commissioner, for a beekeeper's license except that initial licensees shall within ten days after first acquiring bees in this state apply to the commissioner for a beekeeping license.

2. Each application, for an initial license or annual renewal, must set forth the name of the applicant, the total number of colonies to be maintained within this state, the name of the owner of the bees if different from the applicant, and the name and address of ~~lessees, and the name of all managers~~ all persons, other than the applicant, who are responsible for maintaining the bees within the state. The application must be signed by the applicant and the owner of the bees if different from the applicant, and all persons responsible for maintaining the bees within this state. If the applicant is not the owner of the bees, the application must disclose the nature of the relationship between the owner and the applicant. If the applicant is leasing the bees from the owner, a copy of a written lease agreement between the owner and the lessee must be submitted with the application.
3. The application must designate the number of colonies to be maintained at noncommercial apiaries. The application must also specify which apiaries, if any, will remain vacant during the current license period. The license required by this section is not transferable. No person may bring bees or equipment into this state without obtaining an entrance permit pursuant to section 4-12.2-20.
4. Each application for an initial license or renewal must also state the applicant's name, place of residence, and post-office address.

SECTION 4. AMENDMENT. Section 4-12.2-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-04.1. Application of minors for beekeeper's license - Liability for minor. A beekeeper who is licensed either as a commercial operator or hobby operator person must be at least eighteen years of age to be licensed as a beekeeper in this state. However, an applicant for a beekeeper's license a person who is less than eighteen years of age may be licensed as a commercial operator or hobby operator beekeeper, if the that person's application for license is signed by either the mother, father, or legal guardian of the applicant. Any civil or administrative liability for violation of the beekeeping laws of this chapter by a beekeeper who is less than eighteen years of age must be imputed to the person who has signed the application of that beekeeper for a license, which person is jointly and severally liable with the beekeeper.

SECTION 5. AMENDMENT. Section 4-12.2-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-06. Prevention of disease - Assessment of fees. In addition to the license fee required by section 4-12.2-05, an applicant for a license must submit the following fees with the application:

1. A hobby Hobby operator applying for a license shall pay a fee of - ten cents per colony for each colony maintained in this state.

2. ~~Repealed by S.L. 1987, ch. 85, § 7.~~

3. ~~A commercial~~ Commercial operator applying for a license shall pay a fee of — twenty-five cents per colony for each colony maintained in this state.

The commissioner may not issue a beekeeper's license until all civil penalties and all fees required by this section and section 4-12.2-05 are paid.

SECTION 6. AMENDMENT. Section 4-12.2-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-07. Registration of an apiary.

1. Each beekeeper shall make application for registration of all apiaries which are ~~under the beekeeper's control~~ maintained by the beekeeper within the state. The application forms for registration must be furnished by the department. The applicant shall provide the following information on the form provided:
 - a. ~~The applicant's name, place of residence, and post office address.~~
 - b. The location of each apiary, setting forth specifically the type of apiary, the location to the nearest section, quarter section, township, and range, and, if within the corporate limits of a city, the number or name of the lot, block, and addition in the city.
 - ~~c.~~ b. The name of the property owner on whose property the apiary is located; where the registrant is not the property owner, a copy of the written lease or other document from the property owner granting the applicant permission to maintain an apiary at that location. The written lease or other document is adequate for subsequent registrations if the parties to the agreement remain the same.
 - ~~d.~~ c. Any other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and the beekeeping industry.
2. New commercial apiaries may be submitted for registration with the department at any time.
3. Priority in time of application gives the superior right to occupy a location.
4. A beekeeper may maintain or establish an apiary only after application is made and registration of the apiary is approved by the department.

SECTION 7. AMENDMENT. Section 4-12.2-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-10. Establishment of pollination locations.

1. When ~~a person~~ any property owner requests the commissioner to allow additional locations for the purpose of pollinating that ~~person's~~ property owner's crop, the commissioner may waive the two-mile [3.22-kilometer] radius restriction if application is made by that property owner and all the following conditions are met:
 - a. The applicant owns, leases, or rents the land on which the pollination location is to be located and uses the land for the purpose of growing a commercial seed, fruit, or other crop which depends on bees for pollination, and under rules adopted by the commissioner pollination is permitted for the commercial seed, fruit, or other crop to be pollinated.
 - b. The applicant provides the department with all pertinent data and information necessary for the department to determine that each pollination location is needed to adequately pollinate the applicant's crop. Applications must be filled out and submitted by the property owner.
2. The department may refuse to register a pollination location if the application does not demonstrate justification for the pollination location or specify the number and location of pollination locations needed for the purpose of adequately pollinating the applicant's crop.
3. A pollination location may not be sold, leased, transferred, or rented to another person.
4. The department may refuse to register a pollination location if the beekeeper's bees and equipment have been found to not have at least a two-year disease free history.
5. The commissioner shall adopt rules defining those crops for which a location may be allowed for pollination, and where necessary may prescribe time limits for the placement of bees at pollination locations.
6. The beekeeper, not the property owner, is responsible for properly maintaining the bees on the pollination location according to the application and the pollination rules adopted by the commissioner.

SECTION 8. AMENDMENT. Section 4-12.2-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-13. Occupation of locations - Vacancy allowance. Each commercial operator may maintain as vacant locations ten percent of the operator's registered apiary locations. Any registered apiary ~~site~~ which is not listed as a vacant location ~~site~~ pursuant to this section and which is not occupied by July first of each year is forfeited and canceled immediately upon written notice being given to the operator by the department after investigation by the department, and the registration for the location and all rights for the location must be canceled. A commercial operator whose location rights have been forfeited and canceled may request a hearing to reinstate canceled locations, provided that a request for hearing is made within fifteen days after receiving the written notice of forfeiture and cancellation of the location from the department.

SECTION 9. AMENDMENT. Section 4-12.2-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-14. Identification of ~~hives~~ colonies. All ~~hives~~ colonies must be identified as prescribed by the commissioner by rule. Each beekeeper shall specifically state on the application for license, each year, what form of identification will be used by that beekeeper to identify colonies. A beekeeper may not list another beekeeper's brand as an identifying mark on the application or otherwise use another beekeeper's brand to identify that beekeeper's colonies unless the other beekeeper's brand is not being used by that beekeeper to identify any bees maintained in North Dakota and written permission is obtained from the other beekeeper to use the brand.

SECTION 10. AMENDMENT. Section 4-12.2-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-12.2-23. Confiscation and disposal ~~of transported or maintained material~~. Any bees or equipment found to be transported or maintained in violation of the beekeeping laws of this chapter may be confiscated by the state bee inspector or the sheriff of any county where the offense may have occurred and must be disposed of pursuant to court order. This section is in addition to section 4-12.2-21 or an administrative order issued by the commissioner after a hearing held under chapter 28-32, unless the bees or equipment are disposed of under section 4-12.2-21 or subsection 5 of section 4-12.2-16.

SECTION 11. AMENDMENT. Subsection 3 of section 4-12.2-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Whenever a beekeeper fails to appoint an agent in this state, or whenever the beekeeper's agent cannot be found with reasonable diligence, the commissioner is an agent of such beekeeper and service of any process, notice, or demand may be made upon the commissioner. If any process, notice, or demand is served on the commissioner, the commissioner shall forward it by registered certified mail to the beekeeper at the address submitted to the department under section ~~4-12.2-07~~ 4-12.2-04 and service must be deemed complete whether or not the beekeeper claims the certified mail.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 80

SENATE BILL NO. 2257
(Committee on Agriculture)
(At the request of the Livestock Sanitary Board)

BOARD OF ANIMAL HEALTH NAME CHANGE

AN ACT to amend and reenact subsection 1 of section 4-13.2-03, sections 4-13.2-04, 4-30-21, 36-01-01, 36-01-02, 36-01-03, 36-01-04, 36-01-05, 36-01-06, 36-01-07, 36-01-08, 36-01-09, 36-01-10, 36-01-11, 36-01-12, 36-01-12.1, 36-01-13, 36-01-14, 36-01-15, 36-01-16, 36-01-17, 36-01-18, 36-01-19, 36-01-22, 36-01-23, 36-01-24, 36-01-26, 36-01-27, 36-01-28, 36-01-29, 36-01-30, 36-05-03, 36-05-07, 36-05-09, 36-05-10, 36-05-11, 36-05-11.1, 36-05-13, 36-07-01, 36-07-02, 36-07-03, subsection 4 of section 36-07-07, sections 36-07-09, 36-07-10, 36-07-11, 36-09-15, 36-14-01, 36-14-02, 36-14-03, 36-14-05, 36-14-06, 36-14-07, 36-14-10, 36-14-11, 36-14-12, 36-14-13, 36-14-15, subsection 1 of section 36-14-19, section 36-14-21, subsection 1 of section 36-14.1-01, subsection 2 of section 36-15-01, sections 36-15-08, 36-15-08.1, 36-15-21, subsection 2 of section 36-21.1-01, sections 36-22-03, 36-23.1-01, 36-23.1-02, 49-18-31, and subdivision p of subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to changing the name of the livestock sanitary board to the board of animal health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4-13.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Improve poultry breeding and to cooperate with the ~~North Dakota livestock sanitary~~ board of animal health in controlling and eradicating communicable diseases of poultry.

SECTION 2. AMENDMENT. Section 4-13.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-13.2-04. Poultry advisory board - How constituted. The advisory board consists of the executive officer of the ~~livestock sanitary~~ board of animal health; the chairman of the animal science department of North Dakota state university of agriculture and applied science; and three members recommended by the poultry industry who must be one representative from the egg industry, one from the turkey industry, and one from the hatchery industry. The appointed members shall serve: one for a term to expire July 1, 1976; one for a term to expire July 1, 1977; and one for a term to expire July 1, 1979. On or before July first in each year when a term is to expire, a member must be appointed to serve for a term of five years. Members of the advisory board must be reimbursed for mileage and travel as specified in section 54-06-09 and expenses as specified in section 44-08-04 for attendance at regular and special meetings.

SECTION 3. AMENDMENT. Section 4-30-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-21. Standards for the production of cream for manufacturing purposes. Cream for manufacturing purposes must be separated from the milk of healthy cows and from herds which are kept in conformance with the laws of North Dakota and the rules ~~and regulations~~ of the ~~livestock sanitary~~ board of ~~animal health~~ and the state dairy department. Cows must not be fed any hay, silage, or other feed which contains any unwholesome substance. Milk from cows treated with an antibiotic or other drug must be excluded from the market for at least seventy-two hours unless specifically stated otherwise on the label of such antibiotic or drug. The cowyards, premises, and buildings must be kept reasonably clean. Utensils, equipment, and other items used in handling the milk or cream must be kept clean, in good condition, and free of rust. New utensils and equipment must subscribe to 3A standards if such standards have been established for said utensils or equipment. Udders must be washed before milking. The milk and cream must be protected at all times from contamination with flies, rodents, and sediment, and from extremes of temperature.

SECTION 4. AMENDMENT. Section 36-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-01. State ~~livestock sanitary~~ board of ~~animal health~~ - Appointment - Terms - Qualifications. The state ~~livestock sanitary~~ board of ~~animal health~~ consists of seven members appointed by the governor for terms of seven years each with their terms of office so arranged that one term, and only one, expires on the first day of August in each year. No person may be appointed to more than two 7-year terms on the board. Each member of such board must be a qualified elector of this state. Each member of the board, immediately after his appointment shall take the oath of office required of civil officers. One member of said board must be a person actively engaged and financially interested in the commercial beef cattle industry and shall represent said industry on said board; one member of said board must be a person actively engaged and financially interested in the registered purebred beef cattle industry and shall represent said industry on said board; one member of said board must be a person actively engaged and financially interested in the dairy cattle industry and shall represent said industry on said board; one member of said board must be a person actively engaged and financially interested in the swine industry and shall represent said industry on said board; one member of said board must be a person actively engaged and financially interested in the sheep industry and shall represent said industry on said board; and two members of said board must be competent veterinarians who are graduates of a veterinary course in a recognized college or university. Vacancies occurring prior to the expiration of terms of office must be filled by appointment by the governor and must be for the balance of the unexpired term. Recommendations for appointment of members to said board as constituted under this section may be made to the governor by the following associations for the following stated industries, to wit: by the North Dakota stockmen's association for the members representing commercial beef cattle, by the various registered purebred beef cattle associations for the member representing the registered purebred beef cattle, by the various dairy breed associations for the member representing dairy cattle, by the North Dakota swine breeders' association for the member representing swine, by the North Dakota wool growers' association for the member representing sheep, by the state veterinary medical association for the two veterinarian members, and by such other associations within this

state representing livestock industries as the governor may permit. Two recommendations must be submitted for each office to be filled.

SECTION 5. AMENDMENT. Section 36-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-02. Meetings of board - Limitations on number - Special. The state ~~livestock sanitary~~ board of animal health shall hold its meetings at the state capitol at such times as it may designate, but there may not be more than four regular meetings in any one year. The president of the board may call a special meeting whenever in his judgment it becomes necessary.

SECTION 6. AMENDMENT. Section 36-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-03. Officers of board - Election - Qualifications of executive officer. The state ~~livestock sanitary~~ board of animal health shall elect a president and a secretary from among its members and an executive officer who may not be a member of the board. The executive officer must be a competent and skilled veterinarian and must be a graduate of the course in veterinary medicine and surgery offered by a recognized college or university.

SECTION 7. AMENDMENT. Section 36-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-04. Compensation and expenses of members of board. Each member of the state ~~livestock sanitary~~ board of animal health shall receive as compensation for his services the sum of fifty dollars per day for each day employed, and his actual expenses incurred in attending the meetings of the board. Such sum must be paid out of the state treasury upon vouchers of the board duly certified by the executive officer thereof.

SECTION 8. AMENDMENT. Section 36-01-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-05. Executive officer - Salary - Bond. The executive officer of the state ~~livestock sanitary~~ board of animal health shall receive for his services such annual salary as must be fixed by the board within the limits of the appropriations made to the board by the legislative assembly. Before entering upon the discharge of his duties, the executive officer shall give a bond in the sum of five thousand dollars, to the state of North Dakota, conditioned for the proper discharge of his duties, and shall take the oath of office required of civil officers.

* SECTION 9. AMENDMENT. Section 36-01-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-06. Executive officer to act as state veterinarian - Duties. The executive officer of the state ~~livestock sanitary~~ board of animal health shall act as the state veterinarian and he shall:

1. Ascertain, by personal examination or through reports from other accredited representatives of the board, all information which he can obtain regarding the existence of contagious, infectious, and epizootic diseases of animals.
2. Execute all orders, or rules, ~~and regulations~~ made by the board.

3. Present at the quarterly meetings thereof a detailed report of all matters connected with the work done by him or his subordinates during the quarter preceding said meeting.

SECTION 10. AMENDMENT. Section 36-01-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-07. Bacteriologist and consulting veterinarian of board - Duties - Compensation. The professor of veterinary science of the North Dakota state university of agriculture and applied science shall act as bacteriologist and consulting veterinarian to the state ~~livestock sanitary~~ board of animal health. He shall make bacteriological or pathological examinations of all diseased animals or portions thereof, or of such material as may be forwarded to him by the board or its duly authorized agents. He shall furnish material for the diagnosis of contagious diseases and instruction as to its use. For his services, the bacteriologist shall receive such compensation as the board may deem proper, which must be paid out of the fund appropriated for the use of the board.

* SECTION 11. AMENDMENT. Section 36-01-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-08. Duties of board - May make rules and regulations. The state ~~livestock sanitary~~ board of animal health shall protect the health of the domestic animals of this state and shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals of this state. The board may make rules and regulations for the conduct of its business and to carry into effect the purposes of this chapter.

* SECTION 12. AMENDMENT. Section 36-01-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-09. ~~How regulations made~~ Rules. The ~~regulations~~ rules of the state ~~livestock sanitary~~ board of animal health must be made in accordance with the provisions of chapter 28-32.

SECTION 13. AMENDMENT. Section 36-01-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-10. Agents and assistants may be employed by board - Granting of authority to United States government inspectors. The state ~~livestock sanitary~~ board of animal health may employ such officers, agents, or assistants as it may deem necessary to carry out the purposes of this chapter, at a compensation to be fixed by the board within the limits of appropriations made to the board by the legislative assembly. The board may grant to the inspectors of the United States department of agriculture the same authority as is possessed by agents of the board, and when such inspectors are engaged in work by the direction or at the request of the board they may not receive compensation from the state or be required to give bond thereto.

SECTION 14. AMENDMENT. Section 36-01-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-11. Reports of board. The state ~~livestock sanitary~~ board of animal health shall submit a report as prescribed by section 54-06-04 to the governor and the office of management and budget.

SECTION 15. AMENDMENT. Section 36-01-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-12. Powers of board over contagious and infectious diseases. The state ~~livestock sanitary~~ board of animal health may take such steps as it may deem necessary to control, suppress, and eradicate any and all contagious and infectious diseases among any of the domestic animals of this state. For this purpose, the board may quarantine any domestic animal which is infected, or may be infected, with any such disease or which has been exposed, or may be exposed, to infection, cause any animal so infected to be killed, regulate or prohibit the arrival in or departure from this state of any such exposed or infected animal, and at the cost of the owner thereof, it may detain any domestic animal found to be in violation of any such regulation or prohibition. The board may also quarantine any city, civil township, or county or areas within a county in this state and any enclosure, building, or any domestic animal therein which is or may be infected or exposed or may be exposed to any contagious or infectious disease.

SECTION 16. AMENDMENT. Section 36-01-12.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-12.1. Fund transfer for control of diseases. The ~~livestock sanitary~~ board of animal health may use any of the moneys appropriated to it for the control of animal diseases, for the rapid arrest and eradication of foot-and-mouth disease, rinderpest, contagious pleuropneumonia, or any other highly contagious or infectious animal plagues for which purpose adequate funds are not otherwise available.

* SECTION 17. AMENDMENT. Section 36-01-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-13. Diseased animal to be reported to board. Any person who discovers, suspects, or has reason to believe that any domestic animal belonging to him or in his charge, or belonging to any other person, is affected by any contagious disease, shall report such knowledge, suspicion, or belief to:

1. The state ~~livestock sanitary~~ board of animal health or to a member or representative thereof; or
2. The clerk of the township in which such animal is present, or to a supervisor of such township if the clerk cannot be found. If a report is made to an officer under this subsection, such officer shall report the facts immediately to the state ~~livestock sanitary~~ board of animal health, and his failure to do so constitutes a violation of the provisions of this chapter.

* SECTION 18. AMENDMENT. Section 36-01-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-14. Protest against killing of diseased animal - Examination of animal by experts - Appointment of experts. Whenever a domestic animal has been adjudged to be affected with a contagious or infectious disease and has

been ordered killed by the state livestock sanitary board of animal health or by an accredited agent thereof, the owner or keeper of said animal must be notified of the order. Within twenty-four hours after receiving such notice, such owner or keeper may file a protest against the killing of such animal with said board or with its accredited agent who has ordered the animal killed. Such protest must state under oath that to the best of the knowledge and belief of the person making the same such animal is not infected with any contagious or infectious disease. An examination of the animal involved then must be made by three experts, one of whom must be appointed by the board, one by the person making the protest, and the third by the two thus appointed. All such experts must be persons learned in veterinary medicine and surgery and graduates of the veterinary course of a recognized college or university.

SECTION 19. AMENDMENT. Section 36-01-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-15. Expense of experts - How paid. If at least two of the experts declare that the animal involved is free from any contagious or infectious disease, the expense of the consultation must be paid by the state livestock sanitary board of animal health. If at least two of such experts declare that such animal is affected with a contagious or infectious disease, the expenses incurred in the consultation must be paid by the person making the protest.

* SECTION 20. AMENDMENT. Section 36-01-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-16. Disposal of carcass of diseased animal. The owner or keeper of any animal killed by order of the state livestock sanitary board of animal health shall dispose of the carcass of the animal in the manner prescribed by the board. If the owner or keeper of an animal killed as aforesaid is unknown, the carcass must be disposed of at the expense of the county in which the carcass is located.

* SECTION 21. AMENDMENT. Section 36-01-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-17. Board, members, and agents to have same powers as county judge in examinations. The state livestock sanitary board of animal health, and any member or duly authorized agent thereof, may examine or cause to be examined under oath all persons believed to possess knowledge of material facts concerning the existence or dissemination, or the danger of dissemination, of disease among domestic animals. For this purpose, the board, and any member or authorized agent thereof, must have all the powers vested by this code in county judges to take depositions, to compel witnesses to attend and testify, and to administer oaths. Such witnesses shall receive the same fees for attendance and travel as witnesses before the district courts, and said fees must be paid by the board from moneys appropriated to it.

* SECTION 22. AMENDMENT. Section 36-01-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-18. Inspection of livestock in transit - Execution of orders of board by peace officers - Powers of officers - Penalty. Authorized representatives of the state livestock sanitary board of animal health, for

purposes of inspecting livestock in transit for health or ownership identification, may stop vehicles transporting livestock on public highways of this state. When signaled by such representative to stop, the operator of any vehicle shall stop the vehicle, show any health or identification forms which are required to be carried in transportation of livestock, and permit the inspector to make an inspection of the livestock being transported if deemed by the inspector to be necessary. Failure to stop when so directed constitutes a class A misdemeanor. Any vehicle used by an inspector for purposes of inspecting livestock in transit must be clearly identified in letters not smaller than three inches [7.62 centimeters]. The inspector is authorized to use a stop signal.

The state livestock sanitary board of animal health may call any sheriff or deputy sheriff to execute its orders, and those officers must obey the orders of the board. Any peace officer may arrest and take before any county judge of the county any person found violating any of the provisions of this chapter. The peace officer shall notify the state's attorney immediately of the arrest, and the state's attorney shall prosecute the person so offending.

SECTION 23. AMENDMENT. Section 36-01-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-19. Emergency fund in case of epizootic. In case of any serious outbreak of any contagious, infectious, or epizootic diseases among domestic animals, which cannot be controlled with the funds at the disposal of the state livestock sanitary board of animal health, the board shall notify the governor at once, and the governor thereupon shall call a meeting of the emergency commission, and such commission may authorize money to be drawn from the state treasury to meet the emergency.

* SECTION 24. AMENDMENT. Section 36-01-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-22. Permit for feeding garbage to swine. No person may feed garbage to swine without first securing a permit from the livestock sanitary board of animal health. Such permits must be renewed on the first of July of each year. This section does not apply to any person who feeds garbage from his own household.

* SECTION 25. AMENDMENT. Section 36-01-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-23. Application for permit. Any person desiring to obtain a permit to feed garbage to swine shall make written application therefor to the North Dakota livestock sanitary board of animal health.

* SECTION 26. AMENDMENT. Section 36-01-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-24. Revocation of permits. The livestock sanitary board of animal health may suspend or revoke the permit of a person who has violated or failed to comply with the provisions of sections 36-01-21 through 36-01-28 or any of the rules or regulations of the board and may refuse to issue a permit to any person unless satisfied that his feeding operations will be conducted in compliance with the law and rules and regulations of the board.

* SECTION 27. AMENDMENT. Section 36-01-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-26. Inspection and investigation - Maintenance of records - Feeding plants. Any authorized representative of the livestock sanitary board of animal health may enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the treating of garbage to be fed to swine and may examine any records pertaining to the feeding of garbage to swine. The livestock sanitary board of animal health may require maintenance of records relating to the operation of equipment for and procedure of treating garbage to be fed to swine and may require copies to be submitted to the board. The garbage feeding plant must be kept in a reasonably sanitary condition and any dead animals and all garbage which is not consumed must be cleaned up and the place kept in as sanitary a condition as possible under the circumstances.

* SECTION 28. AMENDMENT. Section 36-01-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-27. Enforcement of the act. The livestock sanitary board of animal health shall administer and enforce the provisions of sections 36-01-21 through 36-01-28. The state veterinarian, by and with the consent of the livestock sanitary board of animal health, shall cooperate with the United States department of agriculture, agricultural research service, in the control and eradication of vesicular exanthema and may promulgate adopt and enforce such rules and regulations as may be necessary to carry out the provisions of sections 36-01-21 through 36-01-28.

* SECTION 29. AMENDMENT. Section 36-01-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-28. Penalty. Any person who violates any of the provisions of this chapter for which a specific penalty is not provided, or who knowingly violates any rule or regulation duly established by the livestock sanitary board of animal health, is guilty of a class B misdemeanor.

* SECTION 30. AMENDMENT. Section 36-01-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-29. Quarantined livestock feedlots - Regulations Rules - Licensure. The livestock sanitary board of animal health is authorized to promulgate regulations adopt rules for the establishment and maintenance by any person of a quarantined livestock feedlot. Any person may, on compliance with such regulations the rules, obtain a license for said feedlot upon filing an application with the state livestock sanitary board of animal health and upon the payment of an annual fee of fifty dollars to the state livestock sanitary board of animal health. Such fee must be deposited with the state treasurer in the general fund out of which upon legislative appropriation the veterinarian inspector's fees and cost of administration, must be paid. When so licensed and upon compliance with the regulations rules for the maintenance of the quarantined livestock feedlot, such licensee is authorized to confine and feed, in the feedlot, without vaccination or tests for brucellosis and such other diseases as the livestock sanitary board of animal health may specify, cattle to be sold only for slaughter or at public market or to another quarantined feedlot.

* SECTION 31. AMENDMENT. Section 36-01-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-30. Feedlot registration - Rules and regulations - Penalty. No person may operate a registered livestock feedlot without obtaining from the livestock sanitary board of animal health a registration number. The livestock sanitary board of animal health is hereby authorized to set rules within the limitations of this section for the operation of feedlots registered for the enforcement of brand inspection regulations rules. Applications for registration must be made upon such forms as may be prescribed by the board and must be accompanied by a fee equal to the fee charged for brand recording. All fees and any inspection fees established by the board must be remitted regularly to the North Dakota stockmen's association. The board may promulgate in accordance with adopt rules under chapter 28-32 such rules and regulations consistent with law as may be required for the purpose of assuring that brand laws are complied with and brand inspection certificates are available, and proper records are maintained. Violation of any provision of law or of any rule or regulation of the board promulgated pursuant to adopted under this section subjects the operator to revocation or suspension of registration issued hereunder, and in addition any person violating any provision of this section or rule or regulation of the board promulgated hereunder adopted under this section is guilty of a class B misdemeanor. The provisions of this section may not be construed as prohibiting the operation of nonregistered feedlots.

** SECTION 32. AMENDMENT. Section 36-05-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-03. License requirements - Application - Fee - Commission schedule - Facilities. No person, partnership, firm, or corporation may establish or operate a livestock auction market within this state without first procuring a license to do so from the commissioner. The commissioner may not approve any application without written permission from the executive officer of the livestock sanitary board of animal health. An applicant for such license shall do all of the following:

1. Make a written application therefor in the form prescribed by the commissioner.
2. File such evidence as the livestock sanitary board of animal health or the commissioner may require showing that the person is financially responsible to operate such an auction market and that the person will own or control adequate facilities for the care, sorting, feeding, loading and unloading, and shipment of livestock.
3. Pay to the commissioner a license fee of one hundred dollars.
4. File with the commissioner a schedule of the fees and commissions which will be charged to owners, sellers, or their agents. The schedule must be posted conspicuously at the auction market. This schedule may not be altered except upon notification to the commissioner and reposting of the changed schedule.
5. State the place where applicant proposes to operate a livestock auction market.

** NOTE: Section 36-05-03 was also amended by section 2 of Senate Bill No. 2239, chapter 427.

6. Make a complete and detailed description of the property and facilities proposed to be used in connection with such livestock auction market.
7. Make a showing of public convenience and necessity to the satisfaction of the commissioner.

SECTION 33. AMENDMENT. Section 36-05-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-07. Sanitary regulations of livestock auction market. Every livestock auction market must be maintained in a sanitary condition. Any portion thereof used for the handling of hogs, including all hogpens, alleys, and auction markets, must be equipped with concrete floors at least three inches [7.62 centimeters] thick. Such floors must be cleaned and disinfected after each sale, or in case of a continuous sale, not less than once each week or as often as may be prescribed by the state livestock sanitary board of animal health.

SECTION 34. AMENDMENT. Section 36-05-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-09. Records to be kept by operator of auction market - Contents - Examination - Report. The operator of each livestock auction market shall keep on file an accurate record of all of the following:

1. The date on which each consignment of animals was received and sold.
2. The name and address of the buyer and seller of such animals.
3. The number and species of the animals received and sold.
4. The marks and brands on each such animal.

This record, together with the gross selling price, commission, and other proper care, handling, and sales charges on each consignment of livestock must be available for inspection by the livestock sanitary board of animal health, the commissioner, or authorized inspectors, and a copy thereof must be supplied to the owner of such livestock. All records of sales during the preceding twelve months must be kept readily accessible for immediate examination.

SECTION 35. AMENDMENT. Section 36-05-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-10. Inspection of livestock - Fees and regulations rules governing. When an animal enters a livestock auction market and before it is offered for sale, it must be inspected for health by a veterinarian licensed in this state and approved by the livestock sanitary board of animal health and in the case of cattle for brands by a trained brand inspector, acting under rules promulgated adopted by the North Dakota stockmen's association and the livestock sanitary board of animal health. Veterinary inspection must include all livestock, whether it is to be moved interstate or intrastate. The veterinary inspector must be recommended by the livestock auction agency and approved by the state livestock sanitary board of animal health. Such veterinarian must be a local veterinarian or a veterinarian of

the vicinity, unless there is no such veterinarian available. If the livestock agency fails to recommend such a veterinarian within a reasonable time, the board may in ten days' notice to such agency appoint a veterinarian. The services and duties of the veterinary inspector are under the supervision of the state livestock sanitary board of animal health and said inspector must be relieved of his services by the board when he fails to perform such services and duties as required of him by the livestock sanitary board of animal health. This section does not apply to veterinarians who were approved by the livestock sanitary board of animal health prior to July 1, 1969. Fees for such inspection must be paid to the veterinarian by the auction market company and must be in an amount agreed upon by the auction market company and the veterinarian.

SECTION 36. AMENDMENT. Section 36-05-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-11. Treatment administered to livestock before removal from auction market - Fees for inspection and treatment. No operator of a livestock auction market may permit the removal of any livestock from the establishment until such livestock has been treated in accordance with the regulations prescribed rules adopted by the state livestock sanitary board of animal health. If livestock is destined to be shipped interstate, the authorized veterinarian of such board shall furnish to each purchaser a certificate showing that inspection has been made and treatment administered in accordance with the requirements of the state of destination. All fees for veterinary inspection, treatment, and services, including brand inspection, must be collected by the operator of the livestock auction market and paid to the inspector.

SECTION 37. AMENDMENT. Section 36-05-11.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-11.1. Grievance committee. Any livestock auction market having a complaint against the veterinarian assigned to the livestock auction market, or any veterinarian having a complaint against the auction market to which the veterinarian is assigned may submit a written complaint to the grievance committee. The grievance committee consists of the president of the North Dakota stockmen's association or the president's designee, the president of the livestock auction market association or the president's designee, and the president of the North Dakota veterinary medical association or the president's designee. The members of the committee shall choose one member to serve as chairman. The committee shall meet at the call of the chairman. The committee shall take all complaints under consideration and report its recommendation to the livestock sanitary board of animal health within thirty days after receipt of the complaint.

SECTION 38. AMENDMENT. Section 36-05-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-13. Use of fees - Grounds for refusal or revocation of license - Procedure on default of licensee. All fees collected by the commissioner and the livestock sanitary board of animal health under this chapter must be credited to the general fund of the state treasury. A license to operate a livestock auction market may be refused or revoked for any of the reasons specified in section 36-04-10 or subsection 2 of section 36-04-04. When the holder of a license issued under this chapter defaults in any of the conditions of any bond filed with the commissioner by the licensee, the

commissioner will become trustee of the bond and sections 36-04-12 through 36-04-19 govern the procedure to be followed.

* SECTION 39. AMENDMENT. Section 36-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-01. License required to operate rendering plant. No person, firm, or corporation may operate a rendering plant or establishment using the carcasses of domestic or wild animals which are not intended for human consumption without first obtaining a license to do so from the state livestock sanitary board of animal health. Such license may be issued only upon a written application filed with the board in accordance with the provisions of this chapter and such rules and regulations as may be established by the board.

* SECTION 40. AMENDMENT. Section 36-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-02. Inspection of establishment of applicant by state livestock sanitary board of animal health. Upon the receipt of an application for a license to operate a rendering plant, the state livestock sanitary board of animal health shall cause an inspection to be made of the establishment for which a license is requested, including its equipment and vehicles and the manner in which its business is conducted, with reference and due regard to the danger of disease transmission and dissemination.

* SECTION 41. AMENDMENT. Section 36-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-03. Granting of license - Fee - Term. If the inspection fails to reveal any danger of disease transmission, the state livestock sanitary board of animal health shall issue the license applied for upon payment of a fee of fifty dollars. Such license remains valid for a period of one year from the date of issuance unless it is revoked for cause by said board before such time.

SECTION 42. AMENDMENT. Subsection 4 of section 36-07-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Carry a tank filled with a four percent solution of creosol for use as a disinfectant, or other disinfectant as prescribed by the rules and regulations adopted by the state livestock sanitary board of animal health.

* SECTION 43. AMENDMENT. Section 36-07-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-09. Operator of vehicle for rendering plant to have certificate. Any person operating a vehicle for a licensed rendering establishment shall have an authorized certificate from the rendering establishment which has been approved by the state livestock sanitary board of animal health.

* SECTION 44. AMENDMENT. Section 36-07-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-10. Inspection of rendering plant authorized. The operator of any rendering establishment shall permit an official authorized by the state

livestock sanitary board of animal health or any health officer to inspect his establishment at any time.

* SECTION 45. AMENDMENT. Section 36-07-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-11. Rendering done by packing plants operating under federal inspection - Exception. All rendering done by a packing plant operating under federal inspection in a building adjacent to or on the same premises as said packing plant is exempt from the provisions of this chapter, except that the transportation by such packing plant or a rendering plant of carcasses and other animal substances on any public highway or street is subject to the sanitary requirements of this chapter and the rules and regulations of the state livestock sanitary board of animal health made pursuant thereto.

SECTION 46. AMENDMENT. Section 36-09-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-09-15. Butcher to keep record of branded cattle slaughtered - Penalty. Any person engaged in the business of killing domestic animals and selling the meat of those animals at retail or wholesale, or who slaughters animals on a custom basis, is deemed a butcher for the purposes of this section. Any butcher who kills any head of neat cattle shall keep a record showing all of the following:

1. The name and place of residence of the person from whom such animal was purchased or for whom any custom slaughtering is performed.
2. When and where such animal was purchased or from where the animal came.
3. The sex of such animal and its age to the best of his knowledge.
4. A description of any and all marks and brands on the animal.

The record is open to inspection during business hours by a representative of the livestock sanitary board of animal health. Any person who violates any of the provisions of this section is guilty of an infraction.

SECTION 47. AMENDMENT. Section 36-14-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-01. Sale or gift of animal infected with contagious or infectious disease prohibited - Exception - Notice. No person may sell, give away, or in any manner part with any animal infected with or suspected of being infected with any contagious or infectious disease, except as may be provided otherwise by the rules and regulations of the state livestock sanitary board of animal health. If any animal is known to have been infected with or exposed to any such disease within one year prior to such disposal, due notice of such fact must be given in writing to the person receiving the animal.

SECTION 48. AMENDMENT. Section 36-14-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-02. Killing of infected animal for human consumption prohibited - Exception - Stamping of infected meat. No person may kill for human

consumption any animal infected, or suspected of being infected, with any contagious or infectious disease, nor may he sell, give away, or use any part of such animal or its milk, nor remove any part of its skin, except as the state ~~livestock sanitary~~ board of animal health may provide by rules ~~and regulations~~. When it is lawful under the rules ~~and regulations~~ made by the state ~~livestock sanitary~~ board of animal health to sell, barter, or give away for human consumption the meat from any animal infected with a contagious or infectious disease, each quarter of meat must be stamped or labeled in at least ten separate places with the words "infected meat". No meat from any infected or diseased animal may be placed upon the block or table on which uninfected meat is handled. The provisions of this section do not apply to industries which are under the supervision of the United States department of agriculture, bureau of animal industry.

SECTION 49. AMENDMENT. Section 36-14-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-03. Animals infected with contagious or infectious disease to be confined and isolated from other animals. The owner, agent, or person having in charge any animal infected or suspected of being infected with any contagious disease shall confine the animal immediately in a safe place isolated from all other animals with all necessary restrictions to prevent the dissemination of the disease until the arrival of an accredited agent of the state ~~livestock sanitary~~ board of animal health.

* SECTION 50. AMENDMENT. Section 36-14-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-05. Cattle brought into state - Certificate of health required. All cattle brought into this state for dairy, breeding, and feeding purposes must be accompanied by a certificate of health certifying that such animals are free from symptoms of contagious, infectious, or communicable disease, except that no health certificate is required for those cattle originating directly from a producer's premises and not diverted en route, if such cattle are delivered directly to a licensed auction market or other premises approved by the ~~livestock sanitary~~ board of animal health.

* SECTION 51. AMENDMENT. Section 36-14-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-06. Certificate of health required of sheep imported into state - Contents. All sheep brought into this state must be accompanied by a certificate of health certifying that such animals are free from symptoms of contagious, infectious, or communicable diseases, except that no health certificate is required for those sheep originating directly from a producer's premises and not diverted en route, if such sheep are delivered directly to a licensed auction market or other premises approved by the ~~livestock sanitary~~ board of animal health.

* SECTION 52. AMENDMENT. Section 36-14-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-07. Swine brought into state to have certificate of health - Contents. All swine brought into this state must be accompanied by a certificate of health certifying that such animals are free from symptoms of contagious, infectious, or communicable diseases, except that no health certificate is required for those swine originating directly from a

producer's premises and not diverted en route, if such swine are delivered directly to a licensed auction market or other premises approved by the livestock sanitary board of animal health.

* SECTION 53. AMENDMENT. Section 36-14-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-10. Shipments of cattle, swine, and sheep for immediate slaughter. Shipments into this state of cattle, swine, and sheep for immediate slaughter shall be permitted without a health certificate only if such livestock are not diverted en route, and are delivered directly to a slaughtering establishment approved by the livestock sanitary board of animal health.

* SECTION 54. AMENDMENT. Section 36-14-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-11. Certificates of health issued by whom - Tests made by whom - Regulations Rules governing. All certificates of health required under the provisions of this chapter must be issued, and all tests must be made, by a federal or state veterinarian or a deputy state veterinarian, or by a graduate veterinarian whose inspections and tests are endorsed by the officer in charge of the livestock sanitary board of animal health work in the state where the inspection or test is made, and subject to the regulations rules of the state livestock sanitary board of animal health. All such tests must conform to the standard tests of the United States department of agriculture. All serums used must be manufactured or approved by the United States department of agriculture.

* SECTION 55. AMENDMENT. Section 36-14-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-12. Requirements governing the issuance of certificates. The certificate certifying to a test made under the provisions of this chapter must be made on official federal or state blanks and must accompany the shipment to its destination. When an original certificate is made, three copies thereof must be mailed immediately to the state livestock sanitary board of animal health. The failure of a veterinarian to mail such copies of each certificate relating to livestock to be shipped into this state to the board is sufficient cause to refuse acceptance of any more certificates from such person. The owner or owners of the livestock shall have a copy of the certificate to show on the demand of any federal or state official.

* SECTION 56. AMENDMENT. Section 36-14-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-13. Issuance of health certificate by unauthorized person - Penalty. Any person who issues a health certificate for livestock within this state without being authorized so to do by the state livestock sanitary board of animal health or by the United States department of agriculture is guilty of a class B misdemeanor.

SECTION 57. AMENDMENT. Section 36-14-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-15. Duty of state's attorney to bring actions for violation of provisions of chapter - Notice. If livestock is brought into this state in

violation of any provision of this chapter or contrary to any rule ~~or regulation~~ of the state ~~livestock sanitary~~ board of animal health, the state veterinarian or other accredited agent of the board shall notify the state's attorney of the county into which such livestock has been brought. Immediately upon receiving such a notice the state's attorney shall bring an action against any person, firm, or corporation charged with bringing, transporting, or importing livestock contrary to any provision of this chapter or of any rule ~~or regulation~~ of the state ~~livestock sanitary~~ board of animal health.

SECTION 58. AMENDMENT. Subsection 1 of section 36-14-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. If the animal died of anthrax, as determined by an agent of the state ~~livestock sanitary~~ board of animal health, the carcass must be completely burned at the place where it died if possible. If the carcass must be moved, it may not be dragged over the ground but must be moved only on a suitable conveyor, and all body openings in the carcass must be plugged with cotton saturated with a strong antiseptic solution.

SECTION 59. AMENDMENT. Section 36-14-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-21. Penalty. Any person who knowingly violates any rule ~~or regulation~~ of the state ~~livestock sanitary~~ board of animal health, or who violates any provision of this chapter for which another penalty is not provided, is guilty of a class A misdemeanor.

SECTION 60. AMENDMENT. Subsection 1 of section 36-14.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Board" means state ~~livestock sanitary~~ board of animal health.

SECTION 61. AMENDMENT. Subsection 2 of section 36-15-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Board" means the state ~~livestock sanitary~~ board of animal health.

SECTION 62. AMENDMENT. Section 36-15-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-15-08. Owner entitled to compensation for animal infected with tuberculosis or with paratuberculosis - ~~Livestock sanitary board~~ Board of animal health may make ~~regulations~~ rules governing payments. The owner of an animal adjudged by the board to be infected with tuberculosis or with paratuberculosis and appraised in accordance with the provisions of this chapter is entitled to the amount specified in this chapter. Provided, that when in the discretion and judgment of the ~~livestock sanitary~~ board of animal health, a herd of cattle is so seriously infected with bovine tuberculosis, as to warrant disposal of the entire herd, the board is hereby authorized to approve indemnity payments on all cattle in such herd whether reactors, infected, or not, in accordance with the limits set forth in section 36-15-09. The board may make reasonable rules ~~and regulations~~ governing the payment of such compensation within the limitations prescribed in this chapter.

SECTION 63. AMENDMENT. Section 36-15-08.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-15-08.1. Owner entitled to compensation for cattle infected with or exposed to brucellosis - ~~Livestock sanitary board~~ Board of animal health may make rules and regulations governing payments. When in the discretion and judgment of the ~~livestock sanitary~~ board of animal health, a herd of cattle is so seriously infected with bovine brucellosis, as to warrant disposal of the entire herd, the board is hereby authorized to approve indemnity on all cattle in such herds in accordance with the limits set forth in section 36-15-09. The board may make reasonable rules and regulations governing the payment of such compensation within the limits prescribed in this chapter.

SECTION 64. AMENDMENT. Section 36-15-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-15-21. Calfhood vaccination against brucellosis required - Penalty. No person may bring into this state any female cattle over the maximum vaccination age as prescribed in the brucellosis eradication uniform methods and rules approved and published by the United States department of agriculture, animal and plant health inspection service, for dairy or breeding purposes within this state, that have not been officially calfhood vaccinated against brucellosis. "Officially calfhood vaccinated" means a bovine female animal vaccinated against brucellosis under the supervision of a federal or state veterinary official within age limits prescribed by the ~~North Dakota livestock sanitary~~ board of animal health in compliance with United States department of agriculture uniform methods and rules, with a vaccine approved by the North Dakota state veterinarian, and permanently identified as such a vaccinee and reported at the time of vaccination to the appropriate state or federal agency cooperating in the eradication of brucellosis. However, the board in its discretion may grant a hearing to any person under the rules adopted by the board, as to whether or not an exception should be made to the provisions of this section. An appeal may be taken from the decision of the board under the provisions of chapter 28-32. Any person who brings into this state or acquires within this state any cattle contrary to the provisions of this section, is guilty of a class A misdemeanor.

SECTION 65. AMENDMENT. Subsection 2 of section 36-21.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Board" means the state ~~livestock sanitary~~ board of animal health.

SECTION 66. AMENDMENT. Section 36-22-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-22-03. Rules and regulations - Fees for inspection. The ~~North Dakota livestock sanitary~~ board of animal health shall, with the advice of the officers of the North Dakota stockmen's association, make rules regulating the inspection of cattle for brands at auction markets, packing plants, and buying stations and shall set the fees to be charged by the brand inspector. Brand inspectors under this chapter shall charge and collect fees for inspections on all shipments or consignments of cattle at livestock markets, at the rate authorized by the United States department of agriculture, and shall charge and collect fees for inspection at auction markets, buying stations, and packing plants as must be set by the ~~livestock~~

~~sanitary~~ board of animal health, which funds, so collected, must be paid into the general fund of the North Dakota stockmen's association.

SECTION 67. AMENDMENT. Section 36-23.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-23.1-01. Ante-mortem inspection. Except as otherwise provided by this chapter, the state ~~livestock sanitary~~ board of animal health shall provide, by rule or regulation, for the ante-mortem inspection of all cattle, sheep, swine, goats, horses, mules, or other equines which are to be slaughtered for human food at any slaughtering establishment in this state. The inspection must be performed by licensed veterinarians or other trained personnel of the board, and must determine if the animal under inspection is disease free, and otherwise fit for human food. If the animal is found to be disease free and otherwise fit for human food, the inspecting veterinarian shall allow the slaughter of such animal.

SECTION 68. AMENDMENT. Section 36-23.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-23.1-02. Post-mortem inspection. Except as otherwise provided by this chapter, the state ~~livestock sanitary~~ board of animal health shall provide, by rule or regulation, for the post-mortem inspection of the carcasses or the parts thereof of all cattle, sheep, swine, goats, horses, mules, or other equines which are slaughtered for human food at any slaughtering establishment in this state. The inspection service must be performed by licensed veterinarians or other trained personnel of the board, and must determine if the carcass or the parts thereof are wholesome, clean, healthful, and otherwise fit for use as human food, and not misbranded as defined by section 19-02.1-10 or adulterated as defined by section 19-02.1-09; and, the carcasses and parts thereof that are so determined must be inspected and marked, stamped, or tagged by the inspector as "N. Dak. inspected and passed". The carcasses or the parts thereof that are found to be unwholesome, unclean, unhealthful, or otherwise unfit for human food, or misbranded as defined by section 19-02.1-10 or adulterated as defined by section 19-02.1-09 must be marked, stamped, or tagged by the inspector as "N. Dak. inspected and condemned" and are subject to disposition in accordance with rules and regulations issued by the board. Inspection marks, stamps, and tags must be prescribed by the board, and must include thereon an identification number of the establishment assigned by the board.

SECTION 69. AMENDMENT. Section 49-18-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-31. Cleaning of livestock vehicle by common or contract motor carrier. No common or contract motor carrier subject to this chapter, its officers or agents, transporting either intrastate or interstate commerce, shall use for the transportation of goods for human consumption any motor vehicle which has been used for the transportation of livestock until such motor vehicle has been thoroughly cleansed and disinfected in such manner as shall be prescribed by the state department of health and consolidated laboratories or the livestock sanitary board of animal health.

* SECTION 70. AMENDMENT. Subdivision p of subsection 1 of section 54-07-01.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 54-07-01.2 was also amended by section 3 of Senate Bill No. 2324, chapter 295, and section 6 of House Bill No. 1041, chapter 241.

p. The ~~livestock sanitary~~ board of animal health.

Approved March 14, 1989

Filed March 15, 1989

* NOTE: Twenty-nine North Dakota Century Code sections amended by Senate Bill No. 2257 were also amended or repealed by House Bill No. 1121, chapter 425.

CHAPTER 81

HOUSE BILL NO. 1200
(Committee on Agriculture)
(At the request of the Office of Management and Budget)

AGRICULTURAL FUEL TAX FUND

AN ACT to create and enact a new section to chapter 57-43.1 of the North Dakota Century Code, relating to motor vehicle fuel tax refunds to farm operators; to amend and reenact sections 4-14.1-01, 4-14.1-02, 4-14.1-03, 4-14.1-04, 4-14.1-05, 57-43.1-03, and 57-43.1-06 of the North Dakota Century Code, relating to the North Dakota agricultural products utilization commission, agricultural fuel tax fund, refunds of motor vehicle fuels taxes, and allocation of a portion of motor fuel tax refunds to the agricultural fuel tax fund; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-14.1-01. Legislative policy and purpose. It is hereby declared to be the public policy of the state of North Dakota to protect and foster the prosperity and general welfare of its people by ~~providing a new domestic source of energy and chemicals and other value-added products, and by stimulating improving~~ the agricultural economy of the state. In furtherance of this policy, it is the purpose of this chapter to provide necessary assistance ~~in the construction, operation, and maintenance of agricultural processing plants in North Dakota for the manufacture and marketing of agriculturally derived fuel, chemicals, and other agricultural products to the research and marketing needs of the state by developing new uses for agricultural products, byproducts, and by seeking more efficient systems for processing and marketing agricultural products and byproducts, and to promote efforts to increase productivity and provide added value to agricultural products.~~

* SECTION 2. AMENDMENT. Section 4-14.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-14.1-02. ~~Agriculturally derived~~ Agricultural fuel tax fund - Purposes - Other funds. There is hereby created in the state treasury, a fund, to be known as the ~~agriculturally derived~~ agricultural fuel tax fund, which must be used to ~~provide a program fund programs for the implementation enhancement of a state agricultural research, development, processing industry, and marketing.~~ The fund must be used for the following purposes:

1. ~~Establishment, with cooperation from private industry, of procedures and processes necessary to the manufacture and marketing of agriculturally derived fuels, chemicals, and other agricultural products.~~ Appropriation to the North Dakota agricultural products

* NOTE: Section 4-14.1-02 was also amended by section 2 of House Bill No. 1415, chapter 82.

utilization commission for its necessary administrative expenses including expenses of members of the commission, employment of needed personnel, hiring of consultants, contracting with public or private entities for services, and other expenditures necessary to implement the purposes of this chapter.

2. Establishment of a procedure for entering the agriculturally derived fuel, chemicals, and other agricultural products into the marketplace by private enterprise. Seventy-five percent of agricultural fuel tax funds available to the North Dakota agricultural products utilization commission after amounts necessary under subsection 1 must be made available for basic and applied research efforts regarding uses and processing for agricultural products and byproducts in consultation with the president of North Dakota state university and with the prior approval of the commission on each research proposal.
3. Analysis of the marketing process and testing of marketing procedures to assure acceptance of agriculturally derived fuels, chemicals, and other agricultural products resulting from their manufacture in the private marketplace. Twenty-five percent of agricultural fuel tax funds available to the North Dakota agricultural products utilization commission after amounts necessary under subsection 1 must be made available for utilization and marketing efforts in consultation with the commissioner of agriculture and with the prior approval of the commission on each marketing proposal.
4. Cooperation with private industry to establish privately owned agricultural processing plants in this state to supply demand for agriculturally derived fuel, chemicals, and other agricultural products. The North Dakota agricultural products utilization commission may apply for, accept, and expend any grants, gifts, or services made available from public or private sources consistent with the purposes of this chapter.
5. Employment of needed personnel, hiring of consultants, and contracting with public entities or private parties for services as may be necessary to implement the policy and purposes of this chapter. The allocation of funds in subdivisions 2 and 3 may be changed by the agricultural products utilization commission, subject to emergency commission approval.

SECTION 3. AMENDMENT. Section 4-14.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-14.1-03. Agricultural products utilization commission - Composition - Appointment. The agriculturally derived agricultural fuel tax fund must be administered by the agricultural products utilization commission which is hereby established. The commission consists of seven nine members to, six of whom shall be appointed by the governor for terms of two years each, arranged so that at least three terms expire every year. Four members appointed by the governor must be actively engaged in farming in this state, one member must be actively engaged in the petroleum industry, and two members appointed by the governor must be actively engaged in business in this state. Commission members may be reappointed to the commission. Terms of commissioners shall run from the first day of July of odd-numbered years.

The director of the economic development commission, the president of North Dakota state university, and the commissioner of agriculture, or their designees, are members of the commission. The commission shall elect one of its members as chairman.

SECTION 4. AMENDMENT. Section 4-14.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-14.1-04. Agricultural products utilization commission - Meetings - Personnel - Advisory committee Reports. The agricultural products utilization commission shall meet at least once annually, as necessary and shall report to each session of the legislative assembly. The commission may secure office space and employ needed personnel for the performance of its duties, may hire consultants, and may contract with public entities or private parties for services. The agricultural products utilization commission shall have an advisory committee composed of three persons; one each designated by the director of the economic development commission, the president of the North Dakota state university, and the state commissioner of agriculture.

SECTION 5. AMENDMENT. Section 4-14.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-14.1-05. Agricultural products utilization commission - Expense reimbursement only Reimbursement - Compensation. All members of the agricultural products utilization commission must be reimbursed for their actual and necessary expenses incurred in the performance of their duties, in the same manner as other state officials are reimbursed, according to sections 44-08-04 and 54-06-09, and shall receive no other compensation if not otherwise employed by the state of North Dakota, may receive up to fifty dollars for each regular meeting attended. The commission chairman, if not otherwise employed by the state of North Dakota, may receive an additional one hundred dollars for each regular meeting attended as payment for reviewing and evaluating grant proposals.

SECTION 6. AMENDMENT. Section 57-43.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-03. Refund of tax provided for fuel used for industrial purposes - Reduction for agriculturally derived agricultural fuel tax fund. Any person who buys or uses any motor vehicle fuel as defined in subsection 4 of section 57-43.1-01 for agricultural or industrial purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state on which the motor vehicle fuel tax has been paid, shall be reimbursed or repaid within the time provided in this section chapter, the amount of the tax paid by him upon the presentation to and the approval of the commissioner of a claim for refund. The amount of the tax refund provided for in this section shall be reduced by one-half cent per gallon [3.79 liters] retroactive to January 1, 1983, except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, and the one-half cent per gallon [3.79 liters] withheld from the refund shall must be deposited in the agriculturally derived agricultural fuel tax fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 shall be charged one-half cent per gallon [3.79 liters] by the dealer and the one-half cent charge shall be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

SECTION 7. A new section to chapter 57-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Refund of tax for fuel used for agricultural purposes - Reduction for agricultural fuel tax fund. Any person who buys or uses any motor vehicle fuel for agricultural purposes, except motor vehicle fuel used in motor vehicles operated or intended to be operated in whole or in part upon any of the public highways of this state on which the motor vehicle fuel tax has been paid, shall be reimbursed or repaid within the time provided in this chapter, the amount of the tax paid upon the presentation to and the approval of the commissioner of a claim for refund. The amount of the tax refund provided for in this section shall be reduced by two cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users, and the two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund. Those persons who have a valid tax assignment permit issued by the commissioner under section 57-43.1-11 shall be charged two cents per gallon [3.79 liters] by the dealer and the two cents charged shall be remitted to the commissioner by the dealer when the dealer submits the tax assigned invoices for credit.

* SECTION 8. AMENDMENT. Section 57-43.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-06. Refund to prevent double taxation - Reduction for agriculturally derived agricultural fuel tax fund. Any person to whom special fuel or motor vehicle fuel is sold on which the tax imposed by this chapter or chapter 57-43.2 has been paid who thereafter removes the fuel from this state to a state which requires payment of a tax upon the use of the fuel in that state shall be granted a refund of the tax that was paid pursuant to this chapter or chapter 57-43.2. The refund of tax paid pursuant to this chapter shall be reduced by the amount amounts provided in section sections 57-43.1-03 and section 7 of this Act, and the reduction shall be deposited in the agriculturally derived agricultural fuel tax fund. The refund shall be granted only upon application to the commissioner on forms prescribed by the commissioner, including proof of payment of the tax imposed by the other state, and is subject to the limitations provided in section 57-43.1-05. The tax provided for in section 57-43.2-03 shall not be levied on sales of any such fuel for which a refund of tax is made pursuant to this section.

SECTION 9. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the agricultural fuel tax fund, in the state treasury, not otherwise appropriated, to the North Dakota agricultural products utilization commission for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

Operating expenses	\$ 47,950
Contract personnel	72,000
Ethanol incentive program audit	2,000
Basic and applied research grants	751,920
Utilization and marketing grants	250,640
Ethanol incentive program	3,750,000
Total appropriation from the agricultural fuel tax fund	\$ 4,874,510

* NOTE: Section 57-43.1-06 was also amended by section 3 of Senate Bill No. 2251, chapter 727.

SECTION 10. APPROPRIATION. All income received in excess of the amounts appropriated in section 9 of this Act is hereby appropriated to the North Dakota agricultural products utilization commission for research, marketing, and utilization grants for the biennium beginning July 1, 1989, and ending June 30, 1991. Any funds received require the approval of the budget section of the legislative council before they can be spent.

SECTION 11. APPROPRIATION - TRANSFER. In addition to other transfers from the highway tax distribution fund approved by the fifty-first legislative assembly for the purpose of providing production subsidies to North Dakota ethanol plants, there is hereby appropriated \$250,000, or so much thereof as may be necessary, from the highway tax distribution fund, which shall be transferred by the office of management and budget at the request of the agricultural products utilization commission to the agricultural fuel tax fund for the purpose of providing production subsidies to North Dakota ethanol plants for the biennium beginning July 1, 1989, and ending June 30, 1991. The funds transferred shall be used in the same manner as the transfer provided for in section 5 of House Bill No. 1415 approved by the fifty-first legislative assembly.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 82

HOUSE BILL NO. 1415
(Representatives Myrdal, A. Olson, Skjervén)
(Senator Tallackson)

GASOHOL TAX REDUCTIONS

AN ACT to provide for severability of provisions relating to reductions of motor vehicle fuels taxes and special fuels taxes that contain a blend of qualifying alcohol; to create and enact a new section to chapter 57-43.1 of the North Dakota Century Code, relating to refundability of taxes; to amend and reenact subsection 4 of section 4-14.1-02 of the North Dakota Century Code, relating to the purposes of the agriculturally derived fuels tax fund; to suspend subsections 2 and 3 of section 57-43.1-02 and subsection 2 of section 57-43.2-02 of the North Dakota Century Code, relating to tax reduction for fuels that contain a blend of qualifying alcohol; to provide an appropriation; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Severability of fuels tax reductions. If for any reason the provisions of subsection 3 of section 57-43.1-02 are finally held by a court to be unconstitutional, the provisions of subsection 2 of section 57-43.1-02 and subsection 2 of section 57-43.2-02 continue in effect and the reductions provided for motor vehicle fuels and special fuels that contain an appropriate blend of qualifying alcohol continue to apply to alcohol derived from agricultural products, regardless of the place of production.

* SECTION 2. AMENDMENT. Subsection 4 of section 4-14.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Cooperation with private industry to establish or continue privately owned agricultural processing plants in this state to supply demand for agriculturally derived fuel, chemicals, and other agricultural products.

SECTION 3. A new section to chapter 57-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Nonrefundability of taxes. No person may apply for a refund of any tax paid based upon a claim of unconstitutionality of subsection 3 of section 57-43.1-01 unless the taxes were timely paid under protest.

SECTION 4. SUSPENSION. Subsections 2 and 3 of section 57-43.1-02 and subsection 2 of section 57-43.2-02 of the 1987 Supplement to the North Dakota Century Code are hereby suspended until July 1, 1991, pursuant to the provisions of section 6 of this Act.

SECTION 5. APPROPRIATION - TRANSFER. The amount of \$3,500,000, or so much thereof as may be necessary, is hereby appropriated from the highway tax

- * NOTE: Section 4-14.1-02 was also amended by section 2 of House Bill No. 1200, chapter 81.

distribution fund and shall be transferred by the office of management and budget to the agriculturally derived fuels tax fund for the purpose of providing a production subsidy to North Dakota ethanol plants for the period beginning July 1, 1989, and ending June 30, 1991. The distribution to the agriculturally derived fuels tax fund must be made in two equal installments on the first day of each fiscal year for the biennium beginning July 1, 1989, and ending June 30, 1991. Distribution from the agriculturally derived fuels tax fund to the producers of the agricultural derived fuel must be at the rate of forty cents for each gallon of agriculturally derived fuel produced in the state that is marketed by the producing plant to a distributor or wholesaler for sale within North Dakota. Payment must be approved by the agricultural products utilization commission to the producing plant upon presentation by the plant with an affidavit to the effect that the ethanol sold from the plant and for which the producers credit as being sought, is to be sold at retail to consumers in North Dakota. The certification by the producer of the ethanol must be accompanied by an affidavit from the wholesaler or retailer to the same effect. Upon receipt of the certifications, which must be prepared under oath, the payment must be made to the certifying producer to the extent that funds permit.

SECTION 6. EFFECTIVE DATE. If the Legislative Assembly does not appropriate any moneys from the highway tax distribution fund to the agriculturally derived fuels tax fund for the purpose of providing a production subsidy for the period beginning July 1, 1989, and ending June 30, 1991, or if such a subsidy is determined by a court of final jurisdiction to be unconstitutional, the provisions of subsection 2 of section 57-43.1-02 and subsection 2 of section 57-43.2-02 continue in effect and the reductions provided for motor vehicle fuels and special fuels that contain an appropriate blend of qualifying alcohol continue to apply to alcohol derived from agricultural products, regardless of the place of production.

SECTION 7. EFFECTIVE DATE. Section 3 of this Act is effective for all taxable periods after May 31, 1988.

SECTION 8. EMERGENCY. Section 7 of this Act is declared to be an emergency measure.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 83

SENATE BILL NO. 2047
(Legislative Council)
(Interim Judiciary Committee)

APPEALS FROM LOCAL GOVERNMENT DECISIONS

AN ACT to provide procedures for appeals from the decisions of local governing bodies; to amend and reenact sections 4-16-09, 4-22-39, 11-11-41, 11-11-43, 11-28-19, 11-33-12, 11-33.2-09, 11-35-01, 15-27.3-07, 21-05-07, 24-07-22, 40-02-06.1, 40-05-02.2, 40-26-01, 40-39-10, subsection 5 of section 40-58-18, sections 40-62-04, 57-25-03, 57-28-12, 58-02-23, 58-03-15, 61-07-33, 61-12-18, 61-12-19, 61-12-23, 61-16.1-51, 61-16.1-53, 61-16.1-54, 61-21-17, 61-21-18, 61-21-43.1, 61-21-67, 61-24-17, and 61-32-07 of the North Dakota Century Code, relating to appeals from various local boards, commissions, and districts; and to repeal sections 61-16.1-55, 61-16.1-56, and 61-16.1-57 of the North Dakota Century Code, relating to appeals from water resource board decisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Appeals from local governing bodies - Procedures. This section, to the extent that it is not inconsistent with procedural rules adopted by the North Dakota supreme court, governs any appeal provided by statute from the decision of a local governing body, except those court reviews provided under sections 2-04-11, 40-47-11, and 40-51.2-15. For the purposes of this section, "local governing body" includes any officer, board, commission, resource or conservation district, or other political subdivision. Each appeal is governed by the following procedure:

1. The notice of appeal must be filed with the clerk of the court within thirty days after the decision of the local governing body. A copy of the notice of appeal must be served on the local governing body in the manner provided by rule 4 of the North Dakota Rules of Civil Procedure.
2. The appellee shall prepare and file a single copy of the record on appeal with the court. Within thirty days, or such longer time as the court by order may direct, after the notice of appeal has been filed in the court, and after the deposit by the appellant of the estimated cost of a transcript of the evidence, the local governing body shall prepare and file in the office of the clerk of the court in which the appeal is pending the original or a certified copy of the entire proceedings before the local governing body, or such abstract of the record as may be agreed upon and stipulated by the parties, including the pleadings, notices, transcripts of all testimony taken, exhibits, reports or memoranda, exceptions or objections, briefs, findings of fact, proposed findings of fact submitted to the local governing body, and the decision of the local governing body in the proceedings. If the notice of appeal

specifies that no exception or objection is made to the local governing body's findings of fact, and that the appeal is concerned only with the local governing body's conclusions based on the facts found by it, the evidence submitted at the hearing before the local governing body must be omitted from the record filed in the court. The court may permit amendments or additions to the record to complete the record.

3. If the court determines on its own motion or if an application for leave to adduce additional evidence is made to the court in which an appeal from a determination from a local governing body is pending, and it is shown to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for the failure to adduce such evidence in the hearing or proceeding had before the local governing body, or that such evidence is material to the issues involved and was rejected or excluded by the local governing body, the court may order that such additional evidence be taken, heard, and considered by the local governing body on such terms and conditions as the court may determine. After considering the additional evidence, the local governing body may amend or modify its decision, and shall file with the court a transcript of the additional evidence together with its new or modified decision, if any.

SECTION 2. AMENDMENT. Section 4-16-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-16-09. Charges entered as taxes - Notice required - Appearance - Appeal to district court - Collection. Before the board of township supervisors charges the amounts spent for gopher extermination as taxes against a parcel of land as provided in section 4-16-08, the board shall give the owner thereof at least twenty days' notice by mail of the time when and the place at which such amount will be so charged. The landowner has the right to appear and show cause why such amount must not be charged as taxes. If the landowner feels aggrieved by the decision of the board of township supervisors, ~~he~~ the landowner may appeal to the district court, and the appeal ~~shall must~~ be perfected and prosecuted in the ~~same manner as appeals from municipal courts~~ provided in section 1 of this Act. The county auditor shall enter the amounts upon the tax roll of the county against the land on which the work has been done, and the county treasurer shall collect such amounts in the same manner as taxes are collected, and shall place the same to the credit of the respective townships.

SECTION 3. AMENDMENT. Section 4-22-39 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-39. Aggrieved petitioner and supervisors may appeal to district court from order of board - Procedure. Any petitioner, or the supervisors of any district, aggrieved by an order of a board of adjustment granting or denying, in whole or in part, the relief sought in any petition filed with such board may obtain a review of such order in appeal to the district court by filing in the court a petition praying that the order of the board be modified or set aside. A copy of the petition must be served upon all the parties to the hearing before the board. The party seeking the review shall file in the court a transcript of the entire record in the proceedings, including the documents and testimony upon which the order complained of was entered and the findings, determination, and order of the board, which record

must be certified by the board. After the record has been filed, the court shall give notice of a hearing thereon, and has jurisdiction of the proceedings in accordance with the procedure provided in section 1 of this Act. The court may grant such temporary relief as it deems just and proper, and may enter its decree enforcing, modifying and enforcing as modified, or setting aside in whole or in part, the order of the board. No contention which was not urged before the board may be considered by the court unless the failure or neglect to urge such contention is excused because of extraordinary circumstances. The findings of the board as to the facts are conclusive if such findings are supported by evidence. If any party applies to the court for leave to produce additional evidence and shows to the satisfaction of the court that such evidence is material and that there were reasonable grounds for the failure to produce it on the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings after considering the additional evidence so taken and filed. It shall file the modified or new findings, if any, and if the new findings are supported by evidence, they are conclusive, and the board shall file with the court any recommendations it may have for the modification or setting aside of its original order. The jurisdiction of the court is exclusive, and its judgment and decree is final except that it is subject to review in the same manner as are other judgments or decrees of the court.

SECTION 4. AMENDMENT. Section 11-11-41 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-41. Time for appeal—Notice—Transcript of proceedings. An appeal from a decision of the board of county commissioners must be taken within thirty days after the decision of the board by serving a written notice of appeal upon one member of the board. If the decision from which an appeal is taken relates to tax refunds, tax abatements, or other matters relating to taxation, in addition to the notice of appeal required by section 1 of this Act, a notice of appeal also ~~shall~~ must be served by registered or certified mail upon the state tax commissioner. The county auditor, upon the filing of the undertaking, shall make out a complete transcript of the proceedings of the board relating to the matter in controversy, and shall deliver the same to the clerk of the district court.

SECTION 5. AMENDMENT. Section 11-11-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-11-43. Appeals docketed and tried de novo - Procedure. All appeals taken from decisions of a board of county commissioners ~~shall~~ must be docketed as other causes pending in the district court and ~~shall be heard and determined de novo~~. Section 1 of this Act governs all appeals taken under sections 11-11-39 through 11-11-43.

SECTION 6. AMENDMENT. Section 11-28-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28-19. Publication of rules, regulations, and proceedings. All rules and regulations governing the use of county parks and recreational areas under the jurisdiction, supervision, control, and management of the board of joint park commissioners and all proceedings of ~~said~~ the board ~~shall~~ must be published in the official newspaper of all counties affected in the same manner as the proceedings of the board of county commissioners. Any

person adversely affected by any rule ~~or regulation~~ promulgated by ~~such~~ the board may appeal to the district court of a county comprising a portion of the district ~~and if such.~~ If the court shall find finds the rule or regulations arbitrary, unreasonable, or beyond the scope of sections 11-28-12 through 11-28-22, it shall declare the rule or regulation invalid. Appeals under this section must be taken in accordance with the procedure provided in section 1 of this Act.

SECTION 7. AMENDMENT. Section 11-33-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-33-12. Appeals to district court. Any person, or persons, jointly or severally, aggrieved by a decision of the board of county commissioners under this chapter, may appeal to the district court in the manner provided in ~~chapter 11-11~~ section 1 of this Act.

SECTION 8. AMENDMENT. Section 11-33.2-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-33.2-09. Appeals to district court. Any person, or persons, jointly or severally, aggrieved by a decision of the board of county commissioners under this chapter, or any resolution or amendments adopted hereunder, may appeal to the district court in the manner provided in ~~chapter 11-11~~ section 1 of this Act.

SECTION 9. AMENDMENT. Section 11-35-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-35-01. Regional commissions - Appointment - Powers. The governing boards of counties, cities, and organized townships may cooperate to form, organize, and administer a regional planning and zoning commission for the region defined as may be agreed upon by the governing bodies of such political subdivisions. The regional commission membership shall consist of five members; namely, one from the board of county commissioners, two from the rural region affected, and two from the city, the members from each to be appointed by the respective governing boards. The proportion of cost of regional planning, zoning, studies, and surveys to be borne respectively by each of the said political subdivisions in the region, shall be such as may be agreed upon by their governing boards. The regional commissions, when requested by the governing board of a political subdivision in its region, may exercise any of the powers which are specified and granted to counties, cities, or organized townships in matters of planning and zoning. Upon organization of such commission, publication and hearing procedures shall be conducted pursuant to sections 11-33-08 and 11-33-09. Appeal from a decision of the commission may be taken to the district court in accordance with the procedure provided in section 1 of this Act.

SECTION 10. AMENDMENT. Section 15-27.3-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-27.3-07. Appeal from decision of county committee in making adjustments of property, debts, and liabilities. An appeal may be taken to the district court on any question of adjustment of property, debts, and liabilities among the districts involved in which the power to make an adjustment or adjustments has been extended by this chapter. Any person feeling aggrieved by the decision of the county committee after the hearing

provided for in section 15-27.3-05 may appeal from the decision in accordance with the procedure provided in section 1 of this Act. ~~The appeal must be taken within thirty days after the decision of the committee on the adjustment of the property, debts, and liabilities, by serving a written notice of appeal upon a member of the county committee.~~ If the court finds the terms of the adjustment in question to be not legally or equitably constituted, it shall make an adjustment that is equitable and legal. Any determination by the court with respect to the adjustment of property, debts, and liabilities among the districts or areas involved may not otherwise affect the validity of the reorganization or creation of any district or districts under this chapter.

SECTION 11. AMENDMENT. Section 21-05-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-05-07. Consideration of account - Action thereon. Whenever an account, claim, or demand against any township or county ~~shall have been~~ is reviewed in the manner prescribed in section 21-05-01, the board to which the same is presented may receive and consider the same and may allow or disallow the same, in whole or in part, as to the board shall appear just and lawful, saving to such claimant the right of appeal in accordance with the procedure provided in section 1 of this Act. Approval by the board ~~shall~~ must be recorded in the record of its proceedings and this ~~shall be~~ is sufficient to indicate approval without requiring a majority of the members of the board to sign or initial the voucher or order for payment.

SECTION 12. AMENDMENT. Section 24-07-22 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-07-22. Appeals - When and where taken. Any person who feels aggrieved by any determination or award of damages made by the board having jurisdiction, either in laying out, altering, or discontinuing, or in refusing to lay out, alter, or discontinue, any highway or cartway, within thirty days after the filing of such determination or award of damages, as provided in this chapter, may appeal therefrom in accordance with the procedure provided in section 1 of this Act. If the amount of damages claimed by appellant does not exceed one hundred dollars, the appeal ~~shall~~ must be taken to the county judge. If the damages claimed exceed one hundred dollars, the appeal ~~shall~~ must be taken to the district court.

SECTION 13. AMENDMENT. Section 40-02-06.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-02-06.1. Appeal of board of county commissioners' action - Scope of review. Any final action taken by a board of county commissioners on a petition for incorporation may be appealed to the district court in accordance with the procedure provided in section 1 of this Act. The review on appeal ~~shall extend~~ extends only to the determination of whether the board of county commissioners has pursued its authority regularly and has not exceeded its jurisdiction or abused its discretion under the provisions of this chapter.

SECTION 14. AMENDMENT. Section 40-05-02.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-05-02.2. City may levy excise tax on nonprofit liquor dealers by ordinance.

1. Any city, through the enactment of an ordinance to such effect, may levy a local excise tax, not in excess of fifty percent, upon the proceeds from gross sales of liquor, as defined by subsection 6 of section 5-01-01, by any nonprofit corporation licensed by the city to sell such liquor; provided, however, that no city ~~shall~~ may levy the tax herein provided for unless such nonprofit corporation is the only person, firm, association, or corporation within the corporate limits of such city licensed to sell such liquor.
2. The city in levying the excise tax provided for in subsection 1 shall provide within the levying enactment a method of computation, collection, and disposition of such tax revenue, and a procedure whereby any person aggrieved by such procedure may appeal to the governing body of the city. The right of appeal from a decision of the governing body of such city to the district court of the district wherein such city is located shall not be restricted. An appeal taken under this section must be in accordance with the procedure provided in section 1 of this Act.

SECTION 15. AMENDMENT. Section 40-26-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-26-01. Courts to review levy and apportionment of special assessments. The courts shall review the levy and apportionment of the special assessments in all actions and proceedings involving the validity or apportionment of any special assessment for local or special improvements. An appeal taken under this section must be in accordance with the procedure provided in section 1 of this Act.

SECTION 16. AMENDMENT. Section 40-39-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-39-10. Aggrieved person may appeal to district court. Any person aggrieved by the decision of the governing body granting the vacation of any public grounds, street, or alley, within twenty fifteen days after the publication of the resolution, may appeal to the district court of the county, ~~and the~~ in accordance with the procedure provided in section 1 of this Act. The judgment of the court therein shall be is final.

* SECTION 17. AMENDMENT. Subsection 5 of section 40-58-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Any person affected by an order issued by the public officer may petition the district court, in accordance with the procedure provided in section 1 of this Act, for an injunction restraining the public officer from carrying out the provisions of the order, and the court may, upon such petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause. ~~Provided, however, that within sixty days after the posting and service of the order of the public officer, such person shall petition such court.~~ Hearings shall be had by the court on such petitions within twenty days, or as soon thereafter as possible, and shall be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and shall enter a final order or decree in the proceeding. In all such proceedings the findings of the public officer as to facts, if supported by evidence, shall be conclusive. Costs shall be in the

* NOTE: Section 40-58-18 was also amended by section 17 of Senate Bill No. 2042, chapter 499.

discretion of the court. The remedies herein provided shall be exclusive remedies and no person affected by an order of the public officer shall be entitled to recover any damages for action taken pursuant to any order of the public officer, or because of compliance by such person with any order of the public officer.

SECTION 18. AMENDMENT. Section 40-62-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-62-04. Jurisdiction to improve and regulate. Upon hearing of any protests made by the owners of property within the improvement district in the time and in the manner provided by law, if the governing body shall determine the protests to be insufficient, it may proceed with the improvement as in the case of other special improvements; provided, that before so proceeding a certified transcript of the resolution of necessity shall be recorded in the office of the register of deeds, and any person aggrieved thereby may appeal ~~therefrom~~ to the district court of the county within twenty days after such recording in accordance with the procedure provided in section 1 of this Act, but only on the ground that the establishment of the mall or construction of the skyway in accordance with the resolution will unreasonably and arbitrarily obstruct the public use of and interest in the designated street or streets, or that such resolution has been adopted in a manner contrary to law. Notwithstanding the establishment of a mall or skyway, or the improvement of any street or any portion thereof as a part of such mall or skyway, or any limitation of the use thereof by vehicles, the city and the governing body shall retain at all times their police powers and other powers and rights pertaining thereto, and no such action shall constitute a vacation, in whole or in part, of any portion of a city street.

SECTION 19. AMENDMENT. Section 57-25-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-25-03. Appeal to district court. Any person dissatisfied with the order and determination of the board of county commissioners, ~~within fifteen days after such determination, decision, or order~~, may appeal ~~therefrom~~ to the district court in accordance with the procedure provided in section 1 of this Act.

SECTION 20. AMENDMENT. Section 57-28-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-28-12. Appeal. The governing body of any taxing district, if dissatisfied with the determination of the board of county commissioners, may appeal ~~therefrom within ten days to the district court in the same manner as other appeals are taken from a determination by the board of county commissioners, except that no bond shall be required in accordance with the procedure provided in section 1 of this Act~~. All determinations of minimum values, on appeal, shall be heard by the court without a jury. The county auditor shall make such changes, if any, as may be ordered by the court upon appeal and shall offer such lands for sale at the minimum sale price, determined by the final judgment of the court.

SECTION 21. AMENDMENT. Section 58-02-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-02-23. Division of assets and liabilities of the original township. Within thirty days after the first election is held in a civil township established upon a petition described in section 58-02-21, the board of county commissioners, the county auditor, and the county judge shall meet as a board of arbitrators and shall determine a just and fair distribution of the property and apportionment of the debts of the original township between it and the township separated therefrom and established as a civil township. The new township shall succeed to a proportional share of the moneys and other property of the original township and shall assume a proportional share of the debts and liabilities thereof existing at the time of the division, such proportion to be determined by the relative valuation of the property of the respective parts as shown by the last preceding assessment. The board of arbitrators, upon subpoena issued by the clerk of the district court on the request of such board, may bring before it all necessary witnesses, books, and papers. The determination of the board of arbitrators may be reviewed by the district court on appeal taken in the same manner as an appeal from a determination of a board of county commissioners in accordance with the procedure provided in section 1 of this Act, and shall be enforced by the courts.

SECTION 22. AMENDMENT. Section 58-03-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-03-15. Appeals. Appeals from any rule, ~~regulation~~, restriction, or decision of the board of township supervisors may be made to the district court of the county in which such township lies. Appeals must be taken in accordance with the procedure provided in section 1 of this Act. Upon a showing that any rule, ~~regulation~~, restriction, or decision of the board of township supervisors is unreasonable under the circumstances or contrary to the intent of sections 58-03-11 through 58-03-15, any such ~~regulation rule~~, restriction, or decision may be set aside or reversed.

SECTION 23. AMENDMENT. Section 61-07-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-33. Appeal to district court - Time - ~~Notice~~—Undertaking required - Docketing. An appeal may be taken to the district court from any order or decision of the board of an irrigation district, by any person who is aggrieved thereby; ~~at any time within thirty days after the order or decision appealed from has been made by the board, and filed with the secretary, and served by registered or certified mail upon the interested landowners.~~ Such appeal shall be taken by serving notice of the appeal on the chairman or the secretary of the board and by filing the notice, proof of service thereof, and the undertaking required in this section, with the clerk of the district court of the county in which the appeal is taken. The appeal must be taken in accordance with the procedure provided in section 1 of this Act. To effect an appeal, an undertaking must be executed by the appellant and sufficient surety conditioned that the appellant will prosecute such appeal without delay and will pay all costs adjudged against ~~him~~ the appellant in the district court. ~~Such~~ The ~~undertaking shall must~~ undertaking shall be made in favor of the irrigation district as the obligee and may be enforced by the district. The appeal ~~shall must~~ shall be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is situated, and if ~~such~~ the land is situated in more than one county, the appeal may be taken to the district court of any county in which any part of ~~such~~ the land is situated. Any appeal thus taken ~~shall~~ must be docketed in the district court as any civil cause commenced in the district

court is docketed and thereupon the district court shall have and exercise original jurisdiction in such cause; and shall hear must be heard and determine the same determined without a jury; in like manner as a civil cause originally commenced in that court. The court may require the service and filing of formal pleadings and fix the time therefor. Appeals to the supreme court may be taken by the irrigation district or any other party to the cause from any judgment entered in the district court in any such cause and from any order of said court if an appeal would lie from such an order if the same were entered by the court in any other civil action.

SECTION 24. AMENDMENT. Section 61-12-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-12-18. Petition for review of assessments. Should any landowner believe that the assessment of the damages suffered by him has not been made fairly or equitably ~~he~~ the landowner may appeal to the district court of the county wherein such in which the land is situated, by filing a petition with the clerk of the district court of ~~said the~~ county, asking for a review of such assessment of damages. Such petition must be filed within fifteen days after the entry of the order confirming the same. The appeal must be taken in accordance with the procedure provided in section 1 of this Act.

SECTION 25. AMENDMENT. Section 61-12-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-12-19. Issue placed on court calendar - Judgment - Costs. Upon the filing of a petition for the review of assessments in the office of the clerk of the district court of the county in which the land is situated, said the clerk immediately shall notify the board of flood irrigation thereof. Thereupon the said board shall certify all its records and proceedings in said matter to the district court. Said issue shall be deemed to be on the calendar of said court at the next court term thereof; and shall be heard promptly by the court. If it appears to said the court upon such the hearing that such the assessments have not been made equitably, it may proceed to correct the same. Such The correction and adjustment shall be is final, unless an appeal is taken to the supreme court. Costs may be granted to either party in the discretion of the court.

SECTION 26. AMENDMENT. Section 61-12-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-12-23. Assessment of benefits subject to review. The assessment of benefits provided for in section 61-12-22 also ~~shall be is~~ subject to review in the manner and upon the notice provided for the review of the assessment of damages in sections ~~61-12-17 and 61-12-18~~ in section 1 of this Act.

SECTION 27. AMENDMENT. Section 61-16.1-51 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-51. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction - Definition. If the water resource board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or tenant, the board shall notify the landowner by registered or certified mail at the landowner's post-office address of record. A copy of the notice shall also be sent to the tenant, if any. The notice shall specify the nature and extent of the obstruction, the opinion of the board as to its cause, and shall state that if the obstruction is not

removed within such period as the board shall determine, but not less than thirty days, the board shall procure removal of the obstruction and assess the cost thereof, or such portion as the board shall determine appropriate, against the property of the landowner responsible. The notice shall also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of such demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may immediately apply to the appropriate district court for an injunction prohibiting a landowner or tenant from maintaining an obstruction. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. Any landowner aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided ~~under sections 61-16.1-54 through 61-16.1-57 in section 1 of this Act.~~ A hearing as provided for in this section shall not be a prerequisite to such an appeal.

For the purposes of this section, "an obstruction to a drain" means any barrier to a watercourse, as defined by section 61-01-06, or any artificial drain, which materially affects the free flow of waters in such watercourse or drain.

SECTION 28. AMENDMENT. Section 61-16.1-53 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-53. Removal of a noncomplying dike or dam - Notice and hearing - Appeal - Injunction. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the water resource board shall promptly investigate and make a determination thereon. If the board determines that a dam or other device, capable of retaining, obstructing, or diverting more than twelve and one-half acre-feet [15,418.52 cubic meters] of water, has been established or constructed by a landowner or tenant contrary to the provisions of this title or any rules or regulations promulgated by the board, the board shall notify the landowner by registered or certified mail at the landowner's post-office address of record. A copy of the notice shall also be sent to the tenant, if any. The notice shall specify the nature and extent of the noncompliance and shall state that if the dike, dam, or other device is not removed within such period as the board shall determine, but not less than thirty days, the board shall cause the removal of the dike, dam, or other device and assess the cost thereof, or such portion as the board shall determine, against the property of the landowner responsible. The notice shall also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing upon the matter. Upon receipt of such demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this chapter. If, in the

opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided under sections 61-16.1-54 through 61-16.1-57 in section 1 of this Act. A hearing as provided for in this section shall not be prerequisite to such an appeal.

SECTION 29. AMENDMENT. Section 61-16.1-54 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-54. Appeal from decision of water resource board - Undertaking - Jurisdiction. An appeal may be taken to the district court from any order or decision of the water resource board by any person aggrieved. An appellant shall file an undertaking in the sum of two hundred dollars with such sureties as may be approved by the clerk of the district court to which the appeal is taken. The undertaking shall be conditioned that the appellant will prosecute the appeal without delay and will pay all costs adjudged against the appellant in the district court. The undertaking shall be in favor of the water resource board as obligee, and may be sued on in the name of the obligee. The appeal ~~shall~~ must be taken to the district court of the county in which the land claimed to be affected adversely by the order or decision appealed from is located and is governed by the procedure provided in section 1 of this Act.

SECTION 30. AMENDMENT. Section 61-21-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-17. Notice of order establishing drain and period for appeal. Upon the making of an order establishing or denying establishment of a drain, the board shall give notice to all affected landowners by publishing a notice in a newspaper of general circulation in ~~such~~ the county. ~~Such~~ The notice ~~shall~~ must include a copy of ~~such~~ the order and ~~shall~~ must advise the affected landowners ~~that of their right to appeal to the district court from such order will expire upon thirty days from and after the date of such publication under section 61-21-18.~~

SECTION 31. AMENDMENT. Section 61-21-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-18. Appeal to district court - Time - Undertaking - Hearing. Any person whose land is assessed or may be assessed or is condemned or may be condemned for the construction of a drain under the provisions of this chapter may appeal to the district court from the order of the board establishing or denying the establishment of the drain. ~~Such appeal shall be taken and perfected within thirty days from and after the date of publication of the "notice of order establishing the drain and time of expiration of right of appeal".~~ The appeal must be taken in accordance with the procedure provided in section 1 of this Act. The appellant must ~~file with the clerk of court, and serve upon a member of the board, a notice of appeal, and must~~ give an undertaking to be approved by the clerk of the district court in the sum of two hundred fifty dollars for the payment of the costs in the event that the appellant is unsuccessful in the district court. ~~Such~~ The undertaking ~~shall~~ must run in favor of the county in which the drain is located, and, if located in more than one county, it may run in the name of either of the counties in which the drain is located. The judge shall hear

such the appeal not less than ten days nor more than thirty days after the filing of such the appeal with the clerk, the day of hearing to be fixed by the court, but such time for hearing may be extended by the court for good cause for a period not to exceed thirty days. The case ~~shall~~ must be tried in all respects as a court case without a jury and costs ~~shall be allowed and taxed as costs are taxed in said courts in civil actions and upon like notice.~~ Where such the appeal is perfected, the district court upon the hearing may try and determine the question as to whether, in the first instance, there was sufficient cause for making the petition for the establishment of the drain, whether the proposed drain will cost more than the amount of the benefits to be derived therefrom, and whether such drain was objected to by a majority of the affected landowners in accordance with the weighted voting provisions of section 61-21-16.

SECTION 32. AMENDMENT. Section 61-21-43.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-43.1. Removal of obstructions to drain - Notice and hearing - Appeal - Injunction. If the board determines that an obstruction to a drain has been caused by the negligent act or omission of a landowner or his tenant, the board shall notify the landowner by registered or certified mail at his post office of record. A copy of the notice ~~shall~~ must also be sent to the tenant, if any. The notice must specify the nature and extent of the obstruction, the opinion of the board as to its cause, and must state that if such the obstruction is not removed within such period as the board ~~shall determine~~ determines, but not less than thirty days, the board shall procure removal of ~~said~~ the obstruction and assess the cost thereof, or such portion as the board ~~shall determine~~ determines, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand in writing a hearing upon the matter. Upon receipt of such the demand the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency the board may, immediately upon learning of the existence of the obstruction, apply to a court of proper jurisdiction for an injunction prohibiting such a landowner or his tenant to maintain such an obstruction. Any assessments levied under this section ~~shall~~ must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. Any landowner aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for ~~by sections 61-16-1-54 through 61-16-1-57 in section 1 of this Act.~~ A hearing as provided for in this section ~~shall~~ is not be a prerequisite to such an appeal.

SECTION 33. AMENDMENT. Section 61-21-67 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-67. Closing of noncomplying drain - Notice and hearing - Appeal - Injunction. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to the provisions of this chapter or any rules adopted by the board, the board shall notify the landowner by registered ~~or certified~~ mail at the landowner's post office of record. A copy of the notice ~~shall~~ must also be sent to the tenant, if any. The notice must specify the nature and extent of the

noncompliance and ~~shall~~ must state that if the drain, lateral drain, or ditch is not closed or filled within such period as the board ~~shall determine~~ determines, but not less than thirty days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, of such portion as the board ~~shall determine~~ determines, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand in writing a hearing upon the matter. Upon receipt of such the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from maintaining the drain, lateral drain, or ditch. Any assessments levied under this section ~~shall~~ must be collected in the same manner as other assessments authorized by this chapter. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in accordance with the proportionate responsibility of the landowners. Any landowner aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided for by sections 61-16-1-54 through 61-16-1-57 in section 1 of this Act. A hearing as provided for in this section ~~shall~~ is not be a prerequisite to such an appeal.

SECTION 34. AMENDMENT. Section 61-24-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-24-17. Appeal from orders of district board. An appeal from an order of the board of directors of the conservancy district denying a petition for exclusion may be taken to the district court of the petitioning county. ~~The appeal provided for herein must be taken within thirty days after the order of the district board has been filed with the secretary thereof. The appeal shall be taken by serving notice of appeal upon the secretary of the district. The appeal must be taken in accordance with the procedure provided in section 1 of this Act. The appeal shall must be docketed as any cause pending in district court is docketed and thereupon the court shall have and exercise original jurisdiction and shall hear and determine the cause de novo without a jury. An appeal to the supreme court may be taken by the petitioning county or by the conservancy district, from any judgment entered therein in district court, and from any order of said the court if an appeal would lie from such order if entered by the court in a civil action.~~

SECTION 35. AMENDMENT. Section 61-32-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-32-07. Closing a noncomplying drain - Notice and hearing - Appeal - Injunction. Only a landowner experiencing flooding or adverse effects from an unauthorized drain constructed before January 1, 1975, may file a complaint with the water resource board. Any person may file a complaint about an unauthorized drain constructed after January 1, 1975. A complaint must be filed on a form made available by the state engineer. Upon receipt of a complaint of unauthorized drainage, the water resource board shall promptly investigate and make a determination of the facts with respect to the complaint. If the board determines that a drain, lateral drain, or ditch has been opened or established by a landowner or tenant contrary to the provisions of this title or any rules or regulations promulgated by the

board, the board shall notify the landowner by registered or certified mail at the landowner's post-office address of record. A copy of the notice must also be sent to the tenant, if known. The notice must specify the nature and extent of the noncompliance and shall state that if the drain, lateral drain, or ditch is not closed or filled within such reasonable time as the board shall determine, but not less than thirty days, the board shall procure the closing or filling of the drain, lateral drain, or ditch and assess the cost thereof, or such portion as the board shall determine, against the property of the landowner responsible. The notice must also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing on the matter. Upon receipt of the demand, the board shall set a hearing date within fifteen days from the date the demand is received. In the event of an emergency, the board may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the drain, lateral drain, or ditch and ordering the closure of the illegal drain. Any assessments levied under the provisions of this section must be collected in the same manner as assessments authorized by chapter 61-16.1. If, in the opinion of the board, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the board under the provisions of this section may appeal the decision of the board to the district court of the county in which the land is located in accordance with the procedure provided ~~under sections 61-16.1-54 through 61-16.1-57~~ in section 1 of this Act. A hearing as provided for in this section is not a prerequisite to such an appeal.

SECTION 36. REPEAL. Sections 61-16.1-55, 61-16.1-56, and 61-16.1-57 of the North Dakota Century Code are hereby repealed.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 84

SENATE BILL NO. 2528
(Senators Krauter, Maixner)
(Representatives Martin, Nicholas)
(Approved by the Committee on Delayed Bills)

DAIRY PROCESSORS

AN ACT to create and enact four new sections to chapter 4-30 of the North Dakota Century Code, relating to a release of dairy processors' records, plants, reports, and notice to dairy producers; to amend and reenact sections 4-18.1-14, 4-30-03.3, and 4-30-03.8 of the North Dakota Century Code, relating to the release of information to the commissioner of agriculture or the dairy commissioner, the filing of a surety bond or other security by dairy processors, and surety bond protection for in-state dairy producers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-18.1-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-18.1-14. Entry, inspection, and investigation. Authorized representatives of the board have access to, and may enter at all reasonable hours, all places of business operated by licensees where raw milk, milk products, or frozen dairy products are produced, stored, processed, manufactured, or sold, or where the licensee maintains books, papers, accounts, records, or other documents related to such activities. The board may subpoena, and any of its authorized representatives may inspect and make copies of, any of such books, papers, records, accounts, or documents and audit the same, all for the purpose of determining whether or not the provisions of this chapter and of any regulations rules and stabilization plans issued by the board are being complied with.

The board may subpoena, and any of its authorized representatives may inspect, audit, and make copies of, relevant books, papers, records, accounts, or other documents of persons doing business with licensees.

Any information gained by the board or its representatives through such entry, inspection, or investigation must be treated as confidential by the board and its representatives and must be used only for the administration of this chapter; provided, that such persons may divulge such information when called upon to testify in any duly noticed proceeding before the board or in any court proceeding wherein the board is a party; ~~and provided further, that nothing or to the commissioner of agriculture or the dairy commissioner for the purpose of determining whether a licensee's financial condition is such as to reasonably assure prompt payment to the dairy farmers from whom milk or cream is purchased.~~ Nothing contained in this chapter prevents the use of any information procured by the board or its representatives in the compiling and dissemination of general statistical data, containing information procured from a number of licensees, and compiled in such manner as not to

reveal individual information for any licensee. Any person who divulges confidential information in violation of ~~the provisions of~~ this section to any person, other than members and employees of the board, is guilty of a class A misdemeanor.

The board may also subpoena and take the testimony under oath of persons believed by the board to have information needed by it in administering and enforcing ~~the provisions of~~ this chapter.

SECTION 2. A new section to chapter 4-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

Records release required with application for licensure. An applicant for a license shall file with the license application a release authorizing the commissioner access to the applicant's financial records held by financial institutions, accountants, and others. The release must be in a form approved by the commissioner. The commissioner may use the release in the course of licensing or relicensing the applicant or in the course of an investigation of the applicant due to a complaint against the applicant or when based upon evidence establishing probable cause of a violation of this chapter. Information gained through the use of a release is confidential. The commissioner may furnish information obtained through the use of the records release to any state agency and to any prosecutorial official requiring the information for use in performing official duties.

SECTION 3. AMENDMENT. Section 4-30-03.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-03.3. Surety bond, trustee agreement, other security or assurances. In all cases where it appears that the financial condition of any applicant or licensee who purchases milk or cream from a dairy producer is not adequate to reasonably assure payment to dairy producers when due for the milk or cream to be purchased, or in lieu of annually filing with the department an audited financial statement as required in section 4-30-03.2, the department shall require from an applicant or licensee security or other assurances in one of the following forms:

1. The filing of a surety bond acceptable to the department. The amount of the surety bond must be determined on the basis of average purchases of milk or cream from dairy producers during the previous year. Where payment for milk or cream purchased from dairy producers is made on a weekly basis, the amount of the surety bond must be at least in an amount equal to the average weekly purchases of milk or cream. Where payment for milk or cream purchased from dairy producers is made on a semimonthly basis, the amount of the surety bond must be at least in an amount equal to the average semimonthly purchases of milk or cream. Where the period of payment for milk or cream purchased from dairy producers is made on a basis involving periods of time greater than semimonthly, the amount of the surety bond must be at least in an amount equal to the average purchases of milk or cream for that greater period of time. The amount of the bond for each period of payment must also include an amount equal to at least the average purchases for three days following the close of the period of payment. The amount of the surety bond of any licensee who pays assignments to creditors of a producer of milk and cream at a lesser frequency than the licensee pays the producer must also

include an amount equal to the value of assignments from the prior payment period. The commissioner must be named as obligee, but the bond or draft must be held for the purpose of protecting, and for the benefit of, any dairy producer, and the full and complete payment to the seller for all milk or cream purchased by the licensee. The aggregate liability of the bonding company or the department to all dairy producers must in no event exceed the amount of the bond.

2. The providing of an amount of protection for dairy producers, from whom milk or cream is purchased, equal to the amount of protection provided in subsection 1, whereby the security is to be held by the department solely for the protection of dairy producers, in one or more of the following forms:
 - a. Cash deposited with a bank or trust company and held under an escrow agreement with the department.
 - b. Bonds of the United States deposited with the department.
 - c. Stocks, bonds, or other marketable securities at current market values, which securities have regularly reported quotations, deposited with the department.
 - d. A certified bank draft, certified check, irrevocable letter of credit, or certificate of deposit held in favor of the department.
3. The filing of an agreement providing for the complete control over all manufactured or processed milk and dairy products by a trustee to be selected at least annually by the dairy producers. The trustee shall make and file a trustee's bond and contracts signed by the owner or operator and the purchaser of the dairy products requiring that payment for all dairy products sold be made to the trustee. The trustee shall maintain a separate bank account for that purpose and shall at least annually render a true and correct account of trustee dealings to the department and to the dairy producers.

SECTION 4. A new section to chapter 4-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

Entry, inspection, and investigation. Authorized representatives of the department may enter, at reasonable hours, places of business where a licensee maintains books, papers, accounts, records or other documents related to the production, storage, processing, manufacturing, or sale of dairy products. The commissioner of agriculture may subpoena, and the commissioner's authorized representative may inspect, audit, and make copies of relevant books, papers, records, accounts or other documents of persons doing business with licensees. Any information gained by the department or by the commissioner of agriculture or the commissioner's authorized representative under this section is confidential and may be used only for the administration of this chapter, but the department or the commissioner of agriculture or the commissioner's authorized representative may divulge the information when testifying in any departmental administrative hearing, in a duly noticed proceeding before the milk stabilization board, or in any court proceeding in which the department or the commissioner of agriculture is a

party. This chapter does not prevent the use of information procured by the department or the commissioner of agriculture or the commissioner's authorized representative in the compiling or dissemination of general statistical data containing information procured from a number of licensees and compiled in a manner so as not to reveal individual information for any licensee.

The commissioner of agriculture or the commissioner's authorized representative may also subpoena and take the testimony under oath of persons believed by the commissioner of agriculture to have information needed by the commissioner in administering and enforcing this chapter.

SECTION 5. A new section to chapter 4-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

Records and reports. Licensees shall maintain the records the commissioner by rule determines necessary to effectuate the purpose of assuring that a licensee's financial condition is such as to reasonably assure prompt payment to producers.

SECTION 6. AMENDMENT. Section 4-30-03.8 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-03.8. Out-of-state dealers, processors, or producers not exempt. The provisions of sections Sections 4-30-03.1 through 4-30-03.8 and sections 4 and 5 of this Act apply to all milk or cream purchasers licensed under section 4-30-02 doing business in whole or in part within the state. The protection to producers afforded by sections 4-30-03.1 through 4-30-03.8 and sections 4 and 5 of this Act is available to the producers of any state selling milk or cream to any licensee licensed under section 4-30-02, but the surety bond or other security required by sections 4-30-03.3 and 4-30-03.5 is payable only for the benefit of producers who are located within this state.

SECTION 7. A new section to chapter 4-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

Personal notice to file claims - When claims barred. In lieu of the procedure described in section 4-30-06, the department, as trustee, may provide personal notice by registered mail or by personal delivery in the same manner as a summons is delivered to all producers who have sold milk to the licensee within the pay periods affected by the licensee's default. The producers must be notified that they shall file claims with the department and surrender to it any receipts or other documentation reflecting a default in payment by the licensee. Any producer who fails to file a claim within forty-five days of the receipt of the notice is barred from participating in any fund marshalled by the department as prescribed in this chapter. If every producer affected by the licensee's default files a claim within forty-five days, the department may file its report with the court pursuant to section 4-30-10 before the expiration of the forty-five-day period.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 85

SENATE BILL NO. 2071
(Dotzenrod)

SOYBEAN FUND INCOME

AN ACT to amend and reenact section 4-24-09 of the North Dakota Century Code, relating to the investment income allocation of the soybean fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 4-24-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-24-09. Agricultural commodity assessments funds - Investment income allocation. The state treasurer, at the direction of the governing body of the respective agricultural commodity entity, shall provide for the investment of notwithstanding any other provision of law to the contrary, shall invest in accordance with section 21-10-07 all available moneys in the spud fund, sunflower fund, edible bean fund, barley fund, soybean fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, and the beef commission fund. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, by rule, shall establish, in cooperation with the agricultural commodity organizations, guidelines to be followed by the agricultural commodity organizations regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund. These moneys may be expended only within the limits of legislative appropriation.

Approved March 28, 1989
Filed March 28, 1989

* NOTE: Section 4-24-09 was also amended by section 9 of House Bill No. 1485, chapter 76.

CHAPTER 86

HOUSE BILL NO. 1420
(Representatives Brokaw, Vander Vorst, Kretschmar)
(Senators Vosper, Kelsh, Richard)

DAIRY PROMOTION COMMISSION

AN ACT to amend and reenact section 4-27-04 of the North Dakota Century Code, relating to the membership on the North Dakota dairy promotion commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-27-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-27-04. North Dakota dairy promotion commission. There is hereby created a North Dakota dairy promotion commission consisting of nine members ~~of which the~~. The governor shall appoint ~~four~~ two members, ~~two appointive members who~~ must be producers and ~~two appointive members~~ one member who must be ~~processors~~ a processor. The governor shall appoint the producer members from a list of nominees supplied by the American dairy association of North Dakota and the processor ~~members~~ member from a list of nominees supplied by the North Dakota dairy industries association. Each list of nominees must contain at least twice as many names as the number of appointments to be made therefrom. The term of office of each appointive member of the commission is two years, except that the initial ~~appointments~~ appointment of one producer and one processor ~~are~~ is for only one year, so that thereafter the ~~terms~~ term of one producer and one processor will expire each year. Terms of office commence on the first day of July. In addition to the ~~four~~ three appointive members there must be two ex officio, nonvoting, members of the commission who must be the ~~dairy~~ commissioner of agriculture or the commissioner's designee and the head of the animal science department or the department's designee at North Dakota state university. In addition to the appointive and ex officio members there must be ~~three~~ four elected members of the commission who must be the president of the American dairy association of North Dakota, the president of the ~~national~~ dairy council of North Dakota, and a ~~state executive committee member~~ two members of the American dairy milk producers association of North Dakota to be ~~designated~~ elected by that association. The elected and ex officio members shall meet with the commission and shall have the same rights and duties as the appointive members including the right to vote. The milk producers shall serve terms of two years, commencing on July first, except that initially one producer shall serve a term of one year as designated by the milk producers association of North Dakota.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 87

SENATE BILL NO. 2325
(Senators Dotzenrod, Kelsh)
(Representative Martin)

DAIRY PRODUCT LABELING

AN ACT to create and enact a new subsection to section 4-30-01 of the North Dakota Century Code, relating to the definition of dairy animal; to amend and reenact subsections 25, 48, and 51 of section 4-30-01 and section 4-30-45 of the North Dakota Century Code, relating to the definition of milk; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 4-30-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Dairy animal" means any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.

SECTION 2. AMENDMENT. Subsections 25, 48, and 51 of section 4-30-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25. "Dairy or dairy farm" means a place where one or more ~~cows~~ dairy animals are kept, a part or all of the milk or milk products from which is sold or offered for sale.
48. "Milk" means the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy ~~cows or goats~~ dairy animals.
51. "Milk producer" means a person who owns or controls one or more ~~cows~~ dairy animals, a part or all of the milk or milk products from which is sold, or offered for sale.

SECTION 3. AMENDMENT. Section 4-30-45 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-45. Labeling of milk and milk products for sale at retail. A package, carton, box, or any other container which holds milk or milk products for sale at retail may not bear any statement, design, or device regarding the product, or ingredients and substances contained therein, which is false, deceiving, misleading, or confusing in any particular, or which infers falsely as to the locality, state, or county of its origin. All containers must be so labeled as to clearly show the proper and correct net weight, volume, quantity, or size of the products contained therein as the case may be and they must be filled as full as practicable. All containers must be labeled so as to clearly show the name of the product, its correct

grade, if a grade is stated, and whether or not the product is raw, pasteurized, homogenized, reconstituted, or condensed. A container containing milk or milk products produced from a dairy animal other than a cow must be labeled so as to designate the dairy animal from which the milk or milk product was produced. All containers must be readily identifiable with the dairy plant which last processed, manufactured, or packaged the product either by having the name and location of said plant printed on the container or by registering with the dairy department, a code or mark of identity, which may be a number, name, letter, or any other mark of identity and having this mark plainly painted or stamped on each container. The dairy commissioner shall keep record of all such marks of identity and may not register any mark which is identical to or is so similar to any mark already registered by another person that it would be difficult to differentiate between them. Lettering on all labels on or attached to all such containers must be readily legible and all information required by this section must appear on at least one single panel of all containers. No person, firm, or corporation may use, in connection or association with the sale, exposure for sale, or advertisement of any substance designed to be used as a substitute for butter, the word "butter", "creamery", or "dairy", except as otherwise required by the laws of this state, nor use the name or representation of any breed of dairy cattle, any combination of such word or words and representation, or any other words, or symbols, or combination thereof commonly used in the sale of butter.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 9, 1989

Filed March 9, 1989

CHAPTER 88

SENATE BILL NO. 2508
(Senators Axtman, Kelsh)
(Representative Marks)

PESTICIDE APPLICATION AND CHEMIGATION

AN ACT to amend and reenact subsection 4 of section 4-35-05, section 4-35-09, subsection 2 of section 4-35-13, section 4-35-19, and subsection 1 of section 4-35.1-01 of the North Dakota Century Code, relating to eliminating direct supervision of the application of pesticides by commercial applicators and the definition of chemigation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 4 of section 4-35-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. a. "Certified applicator" means any individual who is certified or licensed under this chapter as authorized to use ~~or supervise the use of~~ any restricted use pesticide covered by ~~his the~~ applicator's certification.
- b. "Private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by ~~him the~~ applicator or his the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.
- c. "Commercial applicator" means a certified applicator, whether or not ~~he the~~ applicator is a private applicator with respect to some uses, who uses ~~or supervises the use of~~ any pesticide which is classified for restricted use for any purpose or on any property other than as provided for by subdivision b.

** SECTION 2. AMENDMENT. Section 4-35-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-09. Commercial applicator's license. No person who would be a commercial applicator if certified may purchase, or use, ~~or supervise the use of~~ a restricted use pesticide without a commercial applicator's license issued by a county treasurer, unless exempted by this chapter, and without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board. The board shall require an annual fee of twenty dollars for each commercial applicator's license issued which is to be paid to the county treasurer, who shall deposit the fee in the county general fund. The license expires on December thirty-first of each year. If the cooperative extension service, or

* NOTE: Section 4-35-05 was also amended by section 1 of House Bill No. 1475, chapter 89.

** NOTE: Section 4-35-09 was also amended by section 4 of House Bill No. 1475, chapter 89.

its designee, finds the applicant qualified to apply pesticides in the classifications he has applied for after examination as the board requires by regulation, and the applicant meets all other requirements of this chapter, the county treasurer of the appropriate county shall issue a commercial applicator's license limited to the classifications the applicant is qualified in. If certification is not to be issued as applied for, the cooperative extension service, or its designee, shall inform the applicant in writing of the reasons therefor. Individuals licensed pursuant to this section are deemed certified commercial applicators for the use of restricted use pesticides.

* SECTION 3. AMENDMENT. Subsection 2 of section 4-35-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The county treasurer shall issue a limited license, without fee, to a public operator who has qualified by examination as prescribed by the board for such license. The public operator's license is valid only when the operator is acting as an operator applying ~~or supervising application of~~ restricted use pesticides used by the entities listed in subsection 1.

** SECTION 4. AMENDMENT. Section 4-35-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-19. Exemptions.

1. The licensing and certification requirements of this chapter do not apply to any person applying pesticides ~~which~~ that are not classified for restricted use.
2. The provisions of this chapter relating to licenses and certification requirements do not apply to a competent person applying restricted use pesticides under the direct supervision of a ~~certified private~~ applicator, unless the pesticide labeling requires that a certified applicator personally applies the particular pesticide. A pesticide is considered to be applied under the direct supervision of a ~~certified private~~ applicator if it is applied by a competent person acting under the instructions and control of a ~~certified private~~ applicator who is available if and when needed, even though such ~~certified private~~ applicator is not physically present at the time and place that the pesticide is applied.
3. Persons conducting laboratory-type research using restricted use pesticides and doctors of medicine and doctors of veterinary medicine applying pesticides as drugs or medication during the course of their normal practice.

SECTION 5. AMENDMENT. Subsection 1 of section 4-35.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Chemigation" means any process by which chemicals, including pesticides and fertilizers, are applied to land or crops through ~~and on the farm~~ an irrigation system.

Approved April 12, 1989
Filed April 13, 1989

* NOTE: Section 4-35-13 was also amended by section 8 of House Bill No. 1475, chapter 89.

** NOTE: Section 4-35-19 was also amended by section 14 of House Bill No. 1475, chapter 89.

CHAPTER 89

HOUSE BILL NO. 1475
(Representatives O'Shea, Brokaw)
(Senators Krauter, Keller, Freborg)

PESTICIDE APPLICATORS AND DEALERS

AN ACT to amend and reenact subdivision a of subsection 4 of section 4-35-05, subsection 3 of section 4-35-06, sections 4-35-08, 4-35-09, 4-35-10, 4-35-11, 4-35-12, 4-35-13, subsection 3 of section 4-35-14, sections 4-35-15, 4-35-16, 4-35-17, 4-35-18, subsections 1 and 2 of section 4-35-19, section 4-35-22, subsection 7 of section 4-35-24, and section 4-35-28 of the North Dakota Century Code, relating to certification of pesticide applicators and distribution of funds; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subdivision a of subsection 4 of section 4-35-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. "Certified applicator" means any individual who is certified ~~or licensed~~ under this chapter as authorized to use or supervise the use of any restricted use pesticide covered by ~~his~~ the applicator's certification.

SECTION 2. AMENDMENT. Subsection 3 of section 4-35-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The board, in promulgating regulations adopting rules under this chapter, shall prescribe standards and requirements for the ~~licensing and~~ certification of applicators of restricted use pesticides. These standards ~~shall~~ must relate to the use and handling of pesticides. In determining these standards and requirements, the board shall take into consideration standards and requirements prescribed by the environmental protection agency.

SECTION 3. AMENDMENT. Section 4-35-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-08. Classification of ~~licenses~~ certificates. The board may classify commercial ~~licenses~~ certificates to be issued under this chapter. Such classifications may include, ~~but not be limited to~~, pest control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any ~~licensee~~ applicator to apply restricted use pesticides or to the use of restricted use pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that ~~no~~ a person may be required to pay

* NOTE: Section 4-35-05 was also amended by section 1 of Senate Bill No. 2508, chapter 88.

an additional ~~license~~ fee if such person desires to be ~~licensed~~ certified in one or more of the ~~license~~ classifications provided for by the board under the authority of this section.

* SECTION 4. AMENDMENT. Section 4-35-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-09. Commercial applicator's ~~license~~ certification.

1. No person who would be a commercial applicator if certified may purchase, use, or supervise the use of a restricted use pesticide without ~~a commercial applicator's license issued by a county treasurer, unless exempted by this chapter, and without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board. The board shall require an annual fee of twenty dollars for each commercial applicator's license issued which is to be paid to the county treasurer, who shall deposit the fee in the county general fund. The license expires on December thirty first of each year.~~
2. An individual may be certified as a commercial applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the cooperative extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the ~~cooperative~~ North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications he has applied for after examination as the board requires by regulation, and the applicant meets all other requirements of this chapter, the ~~county treasurer of the appropriate county~~ North Dakota state university extension service shall issue a commercial applicator's ~~license~~ certificate limited to the classifications the applicant is qualified in.
4. If certification is not to be issued as applied for, the ~~cooperative~~ North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons therefor for not issuing the certification. Individuals ~~licensed~~ certified pursuant to this section are deemed commercial applicators for the use of restricted use pesticides.

SECTION 5. AMENDMENT. Section 4-35-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-10. Expiration of certification - Renewal. Any A certificate issued under section 4-35-09 expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the board, or both, if required by the board. The board shall require a person holding a current valid license may renew such license for the next year without taking another certificate to take an examination unless within the three-year period if the board determines additional knowledge related to classifications for which the applicant has applied

* NOTE: Section 4-35-09 was also amended by section 2 of Senate Bill No. 2508, chapter 88.

makes a new examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to use pesticides safely and properly.

SECTION 6. AMENDMENT. Section 4-35-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-11. Nonresident application - Designation of agent for service of process. Any nonresident applying for a license certification as an applicator or dealer under this chapter to operate in the this state of North Dakota shall file a written power of attorney designating the secretary of state as the agent of such nonresident upon whom service of process may be had in the event of any suit against said nonresident person, and the power of attorney must be so prepared and in such form as to render effective the jurisdiction of the courts of the this state of North Dakota over the nonresident applicant; provided, however, that any nonresident who has a duly appointed resident agent upon whom process may be served as provided by law is not required to designate the secretary of state as such agent. The secretary of state is allowed such fees therefor as provided by law for designating resident agents. The nonresident must be furnished with a copy of the designation of the secretary of state or of a resident agent. The copy will be duly certified by the secretary of state.

SECTION 7. AMENDMENT. Section 4-35-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-12. Pesticide dealer license certification.

1. It is unlawful for any person to distribute or sell restricted use pesticides or assume to act as a restricted use pesticide dealer, at any time, without first having obtained an annual license certification from the county treasurer North Dakota state university extension service, or the service's designee in each the county in which the applicant operates his principal place of business; which license expires on December thirty-first of each year. A license is required for each location or outlet located within this state from which restricted use pesticides are distributed; provided that any manufacturer, registrant, or distributor who has no pesticide dealer outlet licensed within this state and who distributes such pesticides directly into this state shall obtain a pesticide dealer license from any county treasurer for his principal out-of-state location or outlet.
2. Application for a license certificate must be accompanied by a ten dollar annual license an examination fee set by the board and must be on a form prescribed by the board. The board shall promulgate regulations adopt rules governing service of process on members of corporations, partnerships, or associations, and governing the listing of membership in such organizations. The application shall also state the address of each outlet to be licensed, the principal business address of the applicant, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the board.

3. The provisions of this section do not apply to any federal, state, county, or municipal agency or other political subdivision which provides pesticides only for its own programs.
4. The board shall require each pesticide dealer to demonstrate to the county extension agent North Dakota state university extension service or the service's designee knowledge of pesticide laws and regulations; pesticide hazards to humans, animals, and the environment; and the safe distribution, disposal, and use and application of pesticides by satisfactorily passing an examination, after which the county treasurer shall issue a license of qualification or meeting other requirements within each classification for which certification is sought as prescribed by the board.
5. 4. Each restricted use pesticide dealer is responsible for the acts of each person employed by him the dealer in the solicitation and sale of restricted use pesticides and all claims and recommendations for use of such pesticides. The dealer's license certification is subject to denial, suspension, or revocation, after a hearing, for any violation of this chapter, whether committed by the dealer, or by the dealer's officer, agent, or employee.
6. 5. Any A certificate issued under this section expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the board, or both, if required by the board. The board may require any person holding a current valid license may renew such license for the next year without taking another certificate to take an examination unless within the three-year period if the board determines additional knowledge related to pesticides makes a new an additional examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to distribute pesticides safely and properly.

* SECTION 8. AMENDMENT. Section 4-35-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-13. Application of act to governmental entities ~~—Public operator's license required.~~

1. All federal agencies, state agencies, municipal corporations, and any other governmental agencies, or public utilities, are subject to the provisions of this chapter and rules adopted thereunder concerning the application of restricted use pesticides.
2. The county treasurer shall issue a limited license, without fee, to a public operator who has qualified by examination as prescribed by the board for such license. The public operator's license is valid only when the operator is acting as an operator applying or supervising application of restricted use pesticides used by the entities listed in subsection 1.

SECTION 9. AMENDMENT. Subsection 3 of section 4-35-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 4-35-13 was also amended by section 3 of Senate Bill No. 2508, chapter 88.

3. The board shall determine by regulation rule methods to evaluate the competence of private applicators and provisions for reevaluation as advances in technology warrant, or as necessary to assure a continuing level of competence and ability to use pesticides safely and properly. The cooperative North Dakota state university extension service, or its designee, in the county of the residence of the applicant shall issue a certificate, ~~without fee~~, to any private applicator who has qualified as prescribed by the board. However, the cooperative North Dakota state university extension service, or its designee, may require any applicant required to be licensed or certified under this chapter to pay a reasonable charge, not greater than the cost to the cooperative North Dakota state university extension service, for materials provided to the applicant for training and education.

SECTION 10. AMENDMENT. Section 4-35-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-15. Unlawful acts - Grounds for denial, suspension, or revocation of a license or certification. The commissioner may, after opportunity for a hearing, deny, suspend, revoke, or modify any provision of any license or certification issued under this chapter, if the commissioner finds that the applicant or the holder of a license or certification has committed any of the acts enumerated in this section. Each of the following acts is a violation of this chapter, whether committed by an applicant, holder of a license or certification, or any other person applying or using pesticides, if the person:

1. Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertised a pesticide without reference to its classification.
2. Made a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. Applied materials known by him that person to be ineffective or improper.
4. Operated faulty or unsafe equipment.
5. Operated in a faulty, careless, or negligent manner.
6. Neglected, or, after notice, refused to comply with the provisions of this chapter, the rules adopted hereunder, or of any lawful order of the commissioner.
7. Refused or neglected to keep and maintain the records required by this chapter, or to make reports when and as required.
8. Made false or fraudulent records, invoices, or reports.
9. Operated unlicensed equipment in violation of section 4-35-17.
10. Used fraud or misrepresentation in making an application for, or for renewal of, a license or certification.

11. Refused or neglected to comply with any limitations or restrictions on or in a duly issued ~~license~~ or certification.
12. Aided or abetted a ~~licensed~~ certified or an ~~unlicensed~~ uncertified person to evade the provisions of this chapter, conspired with such a ~~licensed~~ certified or an ~~unlicensed~~ uncertified person to evade the provisions of this chapter, or allowed ~~his license or the person's~~ certification to be used by another person.
13. Knowingly made false statements during or after an inspection concerning any infestation of pests found on the land.
14. Impersonated any federal, state, county, or city inspector or official.
15. Distributed any restricted use pesticide to any person who is required by law or ~~regulations promulgated under such law~~ rule to be certified to use or purchase such restricted use pesticide unless such person or his agent to whom distribution is made is certified to use or purchase that kind of restricted use pesticide.
16. Bought, used, or supervised the use of any restricted use pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted therefrom.
17. Applied any economic poison which is not registered pursuant to the provisions of chapter 19-18.

SECTION 11. AMENDMENT. Section 4-35-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-16. ~~Licensees~~ Commercial applicators to keep records - Duration - Submission to commissioner. The board shall require ~~licensees~~ the holders of certificates, except private applicators, to maintain records with respect to applications and sales of restricted use pesticides. Such relevant information as the board may deem necessary may be specified by ~~regulation~~ rule. The records must be kept for a period of three years from the date of the application or sale of the restricted use pesticide to which the records refer. Upon request, these records or pertinent parts thereof, must be submitted to the commissioner.

SECTION 12. AMENDMENT. Section 4-35-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-17. License plates for equipment. The board may require all motor vehicles, as defined in chapter 39-01, which are used for the application of restricted use pesticides to be identified by a license plate or decal furnished by the board. Such license plate or decal must be issued at no cost to the ~~licensee~~ certified applicator, and must be affixed to the vehicle as prescribed by the board. This section must not be interpreted to apply to aircraft engaged in aerial spraying which are licensed under section 2-05-18.

SECTION 13. AMENDMENT. Section 4-35-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-18. Reciprocal agreement. The ~~cooperative~~ North Dakota state university extension service, or its designee, may issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to use restricted-use pesticides under a plan substantially similar to this chapter. Such a certification may be suspended or revoked in the same manner and on the same grounds as ~~licenses~~ and certifications pursuant to this chapter, and must be suspended or revoked if the nonresident's home state certification is suspended or revoked.

* SECTION 14. AMENDMENT. Subsections 1 and 2 of section 4-35-19 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The ~~licensing~~ and certification requirements of this chapter do not apply to any person applying pesticides ~~which~~ that are not classified for restricted use.
2. The provisions of this chapter relating to ~~licenses~~ and certification requirements do not apply to a competent person applying restricted use pesticides under the direct supervision of a certified applicator, unless the pesticide labeling requires that a certified applicator personally applies the particular pesticide. A pesticide is considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place that the pesticide is applied.

SECTION 15. AMENDMENT. Section 4-35-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-22. Subpoenas. The commissioner may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records pertaining to pesticide applications and sales in the state in any hearing affecting the authority or privilege granted by a ~~license~~ or certification issued under the provisions of this chapter.

SECTION 16. AMENDMENT. Subsection 7 of section 4-35-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. If a civil penalty pursuant to section 4-35-23 is imposed by the commissioner of agriculture through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil proceeding in any appropriate court. Additionally, the commissioner may suspend or revoke a ~~license~~ or certification issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed.

SECTION 17. AMENDMENT. Section 4-35-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-28. Disposition of funds. All moneys received by the board under the provisions of this chapter must be deposited ~~with the state treasurer~~ to the credit of the ~~general~~ certification and training fund under the control of the board.

SECTION 18. EFFECTIVE DATE. This Act becomes effective on January 1, 1990.

Approved April 10, 1989
Filed April 11, 1989

* NOTE: Section 4-35-19 was also amended by section 4 of Senate Bill No. 2508, chapter 88.

CHAPTER 90

SENATE BILL NO. 2360
(Thane)

PESTICIDE LOSS REPORTS

AN ACT to amend and reenact subsection 2 of section 4-35-21 and section 4-35-21.1 of the North Dakota Century Code, relating to reports of loss through pesticide application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 4-35-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Any person claiming damages from a pesticide application inflicting damage on property ~~other than property within the target area of the pesticide application~~, except where the claimant was the operator or applicator of the pesticide, shall report the loss in accordance with this chapter. Where damage is alleged to have occurred and the claimant has filed a report of loss in accordance with this chapter, the claimant shall permit the commissioner, the applicator, and ~~his~~ the applicator's representatives to observe, during reasonable hours, the lands or ~~nontarget organism~~ property alleged to have been damaged in order that such damage may be examined. Failure of the claimant to permit such observation and examination of the damaged lands automatically bars the claim against the applicator. The number of applicator's representatives who may make an observation under this subsection may be limited by the board.

SECTION 2. AMENDMENT. Section 4-35-21.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-35-21.1. Reports of loss through pesticide application required.

1. No civil action may be commenced arising out of the application of any pesticide by any applicator inflicting damage on property ~~other than property within the target area of the pesticide application~~; unless the claimant has filed a verified report of loss with the commissioner of agriculture, together with proof of service of the verified report of loss upon the applicator allegedly responsible and; if the claimant is not the person for whom the work was done; then also the person for whom the work was done; within a period of sixty days from the occurrence of the loss or within sixty days from the date the claimant knew the loss had occurred. If the damage is alleged to have been occasioned to growing crops, the report must be filed prior to the time when fifty percent of the crop was harvested. If, however, the applicator does not inform the claimant of the legal requirements for the claimant to file a verified report of loss, the claimant has one year from the date of

the incident to file a verified report of loss, within sixty days from the date the claimant knew or reasonably should have known of the damage:

- a. The claimant has served the applicator allegedly responsible for damage with a verified report of loss;
 - b. If the claimant is someone other than the person employing the applicator alleged to be responsible for the damage, the claimant has served the person who employed the applicator allegedly responsible for the damage with a verified report of loss; and
 - c. The claimant has mailed or delivered to the commissioner of agriculture a verified report of loss together with proof of service of the report required by subdivision a and the report required by subdivision b, if applicable.
2. Notwithstanding the provisions of subsection 1, if damage is alleged to have occurred to growing crops, the report must be filed prior to the time fifty percent of the field is harvested or within sixty days from the date the claimant knew or reasonably should have known, whichever occurs first.
3. The applicator must provide anyone who alleges damage with information of this section for filing a verified report and that timely filing of a report is a prerequisite to any civil action. Failure to provide such information, in addition to the penalties of this chapter, may be grounds for revocation of the applicator's certification and, in addition, the sixty-day limitation of this section does not apply.
4. No verified report of loss is required when the claimant was the operator or applicator of the herbicide, insecticide, fungicide, or agricultural chemical.

Approved April 12, 1989

Filed April 13, 1989

ALCOHOLIC BEVERAGES

CHAPTER 91

SENATE BILL NO. 2402
(Senators Stenehjem, J. Meyer)
(Representatives Stenehjem, Goetz, Carlson)

MINORS SERVICE OF ALCOHOL

AN ACT to amend and reenact sections 5-01-09 and 5-02-06 of the North Dakota Century Code, relating to employment of persons under twenty-one years of age to dispense alcoholic beverages in restaurants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-09. Delivery to certain persons unlawful. Any person knowingly delivering alcoholic beverages to a person under twenty-one years of age, except as allowed under section 5-02-06, or to a habitual drunkard, an incompetent, or an obviously intoxicated person is guilty of a class A misdemeanor, subject to the provisions of sections 5-01-08, 5-01-08.1, and 5-01-08.2.

SECTION 2. AMENDMENT. Section 5-02-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-02-06. Prohibitions as to persons under twenty-one years of age - Penalty - Exceptions. Except as permitted in this section, any licensee who dispenses alcoholic beverages to a person under twenty-one years of age, or who permits such a person to remain on the licensed premises while alcoholic beverages are being sold or displayed, is guilty of a class A misdemeanor, subject to ~~the provisions of~~ sections 5-01-08, 5-01-08.1, and 5-01-08.2. Any person under twenty-one years of age may remain in a restaurant where alcoholic beverages are being sold if the restaurant is separated from the room in which alcoholic beverages are opened or mixed, ~~if~~ and gross sales of food are at least equal to gross sales of alcoholic beverages which are consumed in the dining area, ~~or if~~ ~~the person is~~ employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one or more years of age, and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages, ~~or~~ ~~if~~ if the person is a law enforcement officer entering the premises in the performance of official duty. Any person who is nineteen years of age or older but under twenty-one years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person twenty-one or more years of age, but may not be engaged in mixing, dispensing, or consuming alcoholic beverages. Any establishment where alcoholic beverages are sold may employ persons from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person ~~over~~ twenty-one or more years of age.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 92

HOUSE BILL NO. 1336
(R. Hausauer, Mertens)

ALCOHOLIC BEVERAGE BUSINESS COMPETITIVE PRACTICES

AN ACT to amend and reenact section 5-01-11 of the North Dakota Century Code, relating to unfair competition in the alcoholic beverage business.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-01-11. Unfair competition - Penalty. No manufacturer may engage in any wholesale alcoholic beverage business, nor may any manufacturer or wholesaler have any financial interest in any retail alcoholic beverage establishment nor furnish any such retailer with anything of value ~~except wholesalers.~~ A wholesaler may:

1. Extend normal commercial credits to retailers for industry products sold to them. The state treasurer may determine by regulation the definition of "normal commercial credits" for each segment of the industry.
2. Furnish retailers with beer containers and ~~also~~ equipment for dispensing of tap beer ~~provided if~~ the expense does not exceed fifty dollars per tap per calendar year.
3. Furnish outside signs to retailers if the sign cost does not exceed one hundred dollars exclusive of costs of erection and repair.
4. Furnish miscellaneous materials to retailers not to exceed one hundred dollars per year. "Miscellaneous materials" not subject to this limitation include any indoor point-of-sale items for retail placement. Point-of-sale items include back bar signs, pool table lights, neon window signs, and items of a similar nature. The point-of-sale items must be limited to two hundred fifty dollars per retail account from the wholesaler for each of the wholesaler's brewers or suppliers. The state treasurer may, to keep current with market conditions, adjust the limitation amount for the point-of-sale items on an annual basis upon consultation with representatives of the alcohol beverage industry.

Any wholesaler or manufacturer violating ~~the provisions of~~ this section, or any ~~regulation promulgated hereunder~~ rule adopted to implement this section, and any retailer receiving benefits thereby, is guilty of a class A misdemeanor.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 93

SENATE BILL NO. 2400
(Senator Tallackson)
(Representatives V. Thompson, Nowatzki)

SUNDAY AND HOLIDAY ALCOHOL SALES

AN ACT to amend and reenact sections 5-02-05 and 5-02-05.1 of the North Dakota Century Code, relating to the dispensing of alcoholic beverages on certain days and alcoholic beverage permits; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-02-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-02-05. ~~Disposal~~ Dispensing prohibited on certain days - Penalty. Except as permitted by sections 5-02-05.1 and 5-02-05.2, any person who dispenses or permits the consumption of alcoholic beverages on licensed premises after one a.m. on Sundays, before eight a.m. on Mondays, or between the hours of one a.m. and eight a.m. on all other days of the week, or who dispenses alcoholic beverages or permits consumption of alcoholic beverages on licensed premises on Christmas Day, after one a.m. on Good Friday, or Thanksgiving Day, Christmas Day, or after six p.m. on Christmas Eve, or between the hours of one a.m. and eight p.m. on the day of any statewide special, primary, or general election is guilty of a class A misdemeanor.

* SECTION 2. AMENDMENT. Section 5-02-05.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-02-05.1. Special Sunday ~~convention~~ event alcoholic beverage permit - Penalty.

1. Any city or county may issue a special Sunday convention event alcoholic beverage permit to a private club, lodge, restaurant, motel, or hotel, as defined under city ordinances or county resolutions and licensed as a retail alcoholic beverage establishment pursuant to under chapter 5-02; or to a civic center, which publicly owned or operated facility that serves as the headquarters for a state, multistate, or national convention event of a bona fide organization recognized by the governing body of the city or county in which the convention event is held. A county may not issue a permit under this section to a private club, lodge, restaurant, motel, or hotel located within the geographical boundaries of a city.
2. The authority for issuing such special permit rests solely with the governing body of the city or county. A special permit ~~must~~ may be granted only upon proper application to and approval by the governing body, and ~~shall~~ must include payment of a fee determined

* NOTE: Section 5-02-05.1 was also amended by section 1 of House Bill No. 1562, chapter 94.

- by such the governing body. A special permit granted by the city or county is effective for one Sunday only.
3. Under the special permit, alcoholic beverages may be distributed and dancing may be permitted in those rooms of the private club, lodge, restaurant, motel, hotel, or civic center publicly owned or operated facility which have been specifically reserved for convention event activities, but may not be permitted in bar and lounge areas containing the permanent bar fixtures and normally open to the public. A city or county may permit dancing and the distribution of alcoholic beverages between the hours of twelve noon on the specified Sunday and one a.m. on Monday. Under no circumstances may the The general public may be permitted to participate in the consumption of alcoholic beverages distributed under the authority and conditions of the special permit. It is the duty of the The private club, lodge, restaurant, motel, hotel, or civic center publicly owned or operated facility granted the special permit to shall enforce the requirements of this section and the conditions established by the governing body of the city or county under the permit.
 4. The special Sunday convention event alcoholic beverage permit must may not be granted to allow the distribution of alcoholic beverages at gatherings or meetings which, in the opinion of the governing body of the city or county, are primarily local in nature.
 5. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a special permit, or who furnishes information required by this section which is false or misleading, is guilty of a class A misdemeanor.

Approved April 11, 1989
Filed April 12, 1989

CHAPTER 94

HOUSE BILL NO. 1562
(Representatives Peterson, R. Hausauer, Kelly)
(Senator Nalewaja)

SUNDAY ALCOHOLIC BEVERAGE PERMITS

AN ACT to amend and reenact section 5-02-05.1 of the North Dakota Century Code, relating to Sunday event alcoholic beverage permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 5-02-05.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5-02-05.1. Special Sunday ~~convention event~~ alcoholic beverage permit - Penalty.

1. Any city or county may issue a special Sunday ~~convention event~~ alcoholic beverage permit to a private club, lodge, restaurant, motel, or hotel, as defined under city ordinances or county resolutions and licensed as a retail alcoholic beverage establishment pursuant to under chapter 5-02, or to a civic center publicly owned or operated facility, which serves as the headquarters for a state, multistate, or national ~~convention event~~ of a bona fide organization recognized by the governing body of the city or county in which the ~~convention event~~ is held. A county may not issue a permit under this section to a private club, lodge, restaurant, motel, or hotel located within the geographical boundaries of a city.
2. The authority for issuing such special permit rests solely with the governing body of the city or county. A special permit ~~must~~ may be granted only upon proper application to and approval by the governing body, and ~~shall~~ must include payment of a fee determined by ~~such~~ the governing body. A special permit granted by the city or county is effective for one Sunday only.
3. Under the special permit, alcoholic beverages may be distributed and dancing may be permitted in those rooms of the private club, lodge, restaurant, motel, hotel, or ~~civic center publicly owned or operated facility~~ which have been specifically reserved for ~~convention event~~ activities, ~~but may not be permitted in bar and lounge areas containing the permanent bar fixtures and normally open to the public~~. A city or county may permit dancing and the distribution of alcoholic beverages between the hours of twelve noon on the specified Sunday and one a.m. on Monday. Under no circumstances may the general public be permitted to participate in the consumption of alcoholic beverages distributed under the authority and conditions of the special permit. ~~It is the duty of the~~ The private club, lodge, restaurant, motel, hotel, or ~~civic~~

* NOTE: Section 5-02-05.1 was also amended by section 2 of Senate Bill No. 2400, chapter 93.

~~center~~ publicly owned or operated facility granted the special permit ~~to shall~~ enforce the requirements of this section and the conditions established by the governing body of the city or county under the permit.

4. The special Sunday ~~convention~~ event alcoholic beverage permit ~~must~~ may not be granted to allow the distribution of alcoholic beverages at gatherings or meetings which, in the opinion of the governing body of the city or county, are primarily local in nature.
5. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a special permit, or who furnishes information required by this section which is false or misleading, is guilty of a class A misdemeanor.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 95

SENATE BILL NO. 2376
(Senators Redlin, Lips)
(Representative Nicholas)

ALCOHOL SALES IN CERTAIN STORES

AN ACT to create and enact a new section to chapter 5-02 of the North Dakota Century Code, relating to the sale of alcoholic beverages in gas stations, grocery stores, and convenience stores.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 5-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Sale of alcoholic beverages in gas stations, grocery stores, and convenience stores. Before a state retail off-sale alcoholic beverage license may be issued to a person whose business to be licensed is located in a building that is primarily a gas station, grocery store, or convenience store, the area to be licensed for the sale of alcoholic beverages must be clearly set out in a blueprint or diagram. The area licensed for the sale of alcoholic beverages must be separated from the nonlicensed portion of the business by a wall designed to allow sales personnel to serve customers and make sales in both the licensed and unlicensed portions of the premises, and that may allow customers in either portion of the premises access to the other portion.

Approved April 19, 1989
Filed April 19, 1989

BANKS AND BANKING

CHAPTER 96

HOUSE BILL NO. 1196

(Committee on Industry, Business and Labor)

(At the request of the Department of Banking and Financial
Institutions and the Office of Management and Budget)

FINANCIAL INSTITUTIONS FEES AND REGULATORY FUND

AN ACT to create and enact a new section to chapter 6-01 of the North Dakota Century Code, relating to the establishment of a special fund designated as the financial institutions regulatory fund; to amend and reenact sections 6-01-17, 6-01-17.1, 6-01-17.2, 6-03-70, 6-05-28, subsections 1, 2, and 4 of section 6-06-08, sections 6-10-06, 7-05-01, 13-03-04, subsection 1 of section 13-03-09, section 13-03.1-05, subsection 1 of section 13-03.1-11, section 13-04.1-04, subdivision a of subsection 1 of section 13-04.1-11, section 13-05-04, subsection 2 of section 13-05-06, subsection 1 of section 51-17-07, and section 51-17-10 of the North Dakota Century Code, relating to the annual assessments, examination fees, investigation fees, and annual licenses of institutions and associations supervised; to repeal section 6-06-08.1 of the North Dakota Century Code, relating to additional assessments of credit unions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Regulatory fund established - Uses - Appropriation.

1. There is hereby created a special fund designated as the financial institutions regulatory fund. The amounts received under the following sections, and any other moneys received by the department of banking and financial institutions, must be deposited into this fund: sections 6-01-17, 6-01-17.1, 6-01-17.2, 6-03-70, 6-05-28, subsections 1, 2, and 4 of section 6-06-08, sections 6-10-06, 7-05-01, 13-03-04, subsection 1 of section 13-03-09, section 13-03.1-05, subsection 1 of section 13-03.1-11, section 13-04.1-04, subdivision a of subsection 1 of section 13-04.1-11, section 13-05-04, subsection 2 of section 13-05-06, subsection 1 of section 51-17-07, and section 51-17-10.
2. All moneys deposited in the financial institutions regulatory fund are reserved for use by the department of banking and financial institutions to defray the expenses of the department in the discharge of its administrative and regulatory powers and duties as prescribed by law, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state moneys. The department of banking and financial institutions is responsible for the proper expenditures of these moneys as provided by law.

3. Any cash balance in the financial institutions regulatory fund after all current biennium expenditures are met must be carried forward in the financial institutions regulatory fund for the next succeeding biennium. The balance in this fund at the end of the current biennium may not exceed twenty percent of the department's biennial budget.
4. All moneys derived from the investment of any portion of the financial institutions regulatory fund must be credited to the fund.

SECTION 2. AMENDMENT. Section 6-01-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-01-17. Yearly assessment of banks. Every state banking association and banking institution placed under the jurisdiction and control of the commissioner and the commissioner's deputy examiners by the provisions of this title, including the Bank of North Dakota, shall pay into the state treasury a yearly assessment of one and one-half hundredths of one percent of gross amount of the assets of said corporation or association on June thirtieth of that year, exclusive of expenses, interest, and taxes paid, and inclusive of any valuation allowance or allowances deducted by a state banking association from any asset account. Such fee may not be less than seven hundred fifty dollars. This assessment is to be determined by the state banking board as necessary to fund that portion of the department's budget relating to the regulation of state-chartered banks. Assessment fees may not be computed on the combined assets of the bank and its trust department for those banks exercising trust powers. The minimum and maximum shall apply to the assets of the bank separate from the assets of the trust department; and fees Fees for the examination of the trust department must be computed in accordance with section 6-05-28. The assessment must be paid to the state treasurer within thirty days of each June thirtieth. Institutions that have not been examined by the commissioner or the state banking board for three years prior to any assessment date shall not be required to pay the assessment. The state treasurer shall report such payments of fees to the state banking board commissioner, and if any such corporation or institution shall be delinquent more than twenty days in making such payment, the board may make an order suspending the functions of such delinquent corporation or institution until payment of the amount due; plus. The commissioner may assess a penalty of five dollars a day additional for the delay for each day that the assessment fee is delinquent. All fees and penalties under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 3. AMENDMENT. Section 6-01-17.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-01-17.1. Application fees - Cost of transcript. The following fees must accompany an application presented to the state banking board, state credit union board or commissioner and must be paid by the commissioner into the general fund of the state treasury financial institutions regulatory fund:

1. For a certificate of authority to organize a banking association, a fee of two five thousand five hundred dollars, paid by the applicants.

2. A banking association's application for authority to remove its business to some place within the state other than the town in which it is presently located and to change its name, a fee of two thousand five hundred dollars.
3. National bank conversion to a state bank, a fee of two thousand five hundred dollars.
4. Application by two or more banks to merge or consolidate, a fee of one thousand five hundred dollars for each merging bank.
5. Application by a person to sell, dispose, or purchase an association, banking institution, or holding company, a fee of five hundred dollars unless a hearing is held before the board in which case the fee is two thousand dollars.
6. A banking association's application to establish and operate a separate facility for drive-in and walkup service, a fee of one thousand five hundred dollars.
- ~~4-~~ 7. A banking association's application to establish and operate a paying and receiving station, a fee of one thousand five hundred dollars.
- ~~5-~~ 8. A banking association's application to establish customer electronic funds transfer centers, a fee not to exceed one thousand ~~five hundred~~ dollars.
- ~~6-~~ 9. For a certificate of authority to organize an annuity, safe deposit, surety or trust company, a fee of ~~two five~~ thousand ~~five hundred~~ dollars.
- ~~7-~~ 10. A banking association's application for authority to exercise trust powers, a fee of one thousand five hundred dollars.
11. Application to organize a credit union, a fee of three hundred dollars, paid by the applicants.
12. Application for a credit union to establish a branch, a fee of three hundred dollars.
13. Application by a credit union to expand its field of membership, a fee of one hundred fifty dollars.
14. Application by a federal credit union to convert to a state credit union, a fee of three hundred dollars.
- ~~8-~~ 15. For a certificate of authority to organize a savings and loan association, a fee of ~~two five~~ thousand ~~five hundred~~ dollars.
- ~~9-~~ 16. A savings and loan association's application to establish and operate a branch office, a fee of one thousand five hundred dollars.

The commissioner ~~shall~~ may cause a certified transcript to be prepared for any hearing conducted on an application. The costs for the original and up to six copies of the transcript must be paid by the applicant.

SECTION 4. AMENDMENT. Section 6-01-17.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-01-17.2. Additional assessment of banks. Where the commissioner determines that more than one visit, inspection, or examination is necessary to promote the safety and soundness of a state banking association during a twelve-month period, such state banking association shall pay to the state treasurer one hundred dollars per day a fee for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with each additional visit, inspection, or examination and report of examination and for time used by each deputy examiner, or other person or persons in making and otherwise preparing and typing the reports of examination herein provided for. Fees for such visit, inspection, or examination must be charged by the department of banking and financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visit, inspection, or examination provided for by this section. A state banking association shall pay such assessment or fee within ten days of receiving a billing from the commissioner. Fees must be deposited in the financial institutions regulatory fund. The state treasurer shall report such payments of fees to the ~~state banking board~~ commissioner, and if any such corporation or institution is delinquent more than twenty days in making such payment, the board may make an order suspending the functions of such delinquent corporation or institution until payment of the amount due, ~~plus~~. The commissioner may assess a penalty of five dollars a day additional for the delay. The state banking board may waive or postpone the collection of this special assessment if such assessment would place an undue burden on the state banking association.

SECTION 5. AMENDMENT. Section 6-03-70 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-70. Reports - Regular and special - Publication - Penalty. Every state banking association shall respond to calls each year, the number to be determined by the commissioner. The commissioner shall prescribe the forms for such reports which must be the same forms as those for similar reports called by the federal deposit insurance corporation. The reports must exhibit in detail, under appropriate headings, the resources and liabilities of the association at the close of business on a past day specified by the commissioner, which must be the same day on which similar reports are required by the federal deposit insurance corporation. Each report must be verified by the oath of the president or the cashier and attested as correct by at least two of the directors, and must be transmitted to the commissioner within thirty days after receipt of the request for the same. Each report, in a form prescribed by the commissioner, must be published within sixty days of the call date, at the expense of the association, in some newspaper in the city where such bank is located, and in case there is no such newspaper, then in a legal newspaper of the county in which such association is located. The commissioner may request an amended call for reports filed in error and may require republication of the call report containing material errors. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the federal deposit insurance corporation or federal reserve bank, or a printout retrieved from computer facilities in the department of banking and financial institutions and connected to those of the federal deposit insurance corporation. The commissioner may call for a special report from any association whenever in the commissioner's judgment the same is necessary to obtain complete

knowledge of the condition of the association. Every association which fails to make and transmit any report required by this section shall forfeit and pay to the state treasurer for deposit in the financial institutions regulatory fund a penalty of two hundred dollars for each delinquency. The commissioner may waive the penalty for reports filed late, not exceeding three business days beyond the due date required by this section.

SECTION 6. AMENDMENT. Section 6-05-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-28. Examination by commissioner - Fees - Power over business, officers, and employees. The commissioner shall make a full, true, complete, and accurate examination and investigation of the affairs of each corporation doing business under this chapter as often as the commissioner deems necessary. Such examination must be made without previous notice to the corporation to be examined. Fees for such examinations must be charged by the department of banking and financial institutions for the examinations provided for by this section at the rate of one hundred thirty five dollars per day for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with such examination and report of examination and for time used by each deputy examiner, or other person or persons in making and otherwise preparing and typing the reports of examination herein provided for at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund. The commissioner, in the commissioner's discretion, may accept, in lieu of any examination authorized or required by this title to be conducted by the department of banking and financial institutions, the examination that may have been made of such institution within a reasonable period by the federal reserve bank or federal deposit insurance corporation, if a copy of such examination is furnished to the commissioner. The commissioner shall assume and exercise over each such corporation and its business, officers, directors, and employees all the power and authority conferred upon the commissioner over banking and other financial or moneyed corporations or associations.

* SECTION 7. AMENDMENT. Subsections 1, 2, and 4 of section 6-06-08 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Credit unions and the permanent loan funds thereof, if any, are under the supervision of the state credit union board. Credit unions shall report to the commissioner when called by the commissioner, and at least twice each year. The commissioner shall prescribe the forms for such reports. The reports must be received by the commissioner within thirty days of the call. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the national credit union administration, or a printout retrieved from computer facilities in the department of banking and financial institutions and connected to those of the national credit union administration. The commissioner may call for special reports from any credit union whenever in the commissioner's judgment the same is necessary to obtain complete knowledge of the condition of the credit union. Every credit union which fails to make and transmit any report required in pursuance of this section shall forfeit and

* NOTE: Subsection 2 of section 6-06-08 was also amended by section 5 of House Bill No. 1122, chapter 98.

pay to the state a penalty of two hundred dollars for delinquency. The commissioner may waive the penalty for reports filed late, not exceeding three business days beyond the due date required by this section.

2. Credit unions must be examined at least once each ~~eighteen~~ twenty-four months by the commissioner, or with the commissioner's approval and the approval of the state credit union board, credit unions may be examined annually by a certified public accountant or the North Dakota credit union league. In lieu of the examinations herein required, the commissioner may accept any examination made or obtained by the national credit union administration, and may in his or her discretion conduct a joint examination with said federal agency. Examinations made by the commissioner or deputy examiners must be made without previous notice to the credit union. If the examination is not made by the commissioner, the expense of such examination must be borne by the credit union examined and such examination must be in such form and contain such information as the commissioner may require. Two copies of such examination must be filed with the commissioner within thirty days after completion of the examination and must be approved by the commissioner.
4. Every state credit union, including North Dakota central credit union, placed under the jurisdiction and control of the state credit union board and the commissioner by the provisions of this title shall pay into the state treasury a yearly assessment of one and one-half hundredths of one percent of the gross amount of the assets of the corporation or association on June thirtieth of that year, exclusive of expenses, interest, and taxes paid; and inclusive of any valuation allowance or allowances deducted by the credit union from any asset account. The fee may not be less than three hundred dollars. This assessment is to be determined by the state credit union board as necessary to fund that portion of the department's budget relating to the regulation of state chartered credit unions. The assessment must be paid to the state treasurer within thirty days of each June thirtieth, except that those credit unions whose examination has begun within the six months immediately prior to July 1, 1987, do not have to pay the first yearly assessment. Credit unions that have not been examined by the commissioner or the state credit union board for three years prior to any assessment date are not required to pay the assessment. The state treasurer shall report the payments of fees to the state credit union board commissioner, and if any credit union is delinquent more than twenty days in making payment, the board may make an order suspending the functions of the delinquent credit union until payment of the amount due, plus. The commissioner may assess a penalty of five dollars a day additional for the delay for each day that the penalty is delinquent. The examination fee for North Dakota central credit union shall be charged by the department at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examination. All fees and penalties under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 8. AMENDMENT. Section 6-10-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-10-06. Duty of commissioner. The commissioner may make an examination of the business of such licensee, and such applicant shall pay an examination fee to the state treasurer. Fees for such examinations must be charged by the department of banking and financial institutions for the examinations provided for by this section at the rate of one hundred thirty-five dollars per day for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with such examination and report of examination and for time used by each deputy examiner, or other person or persons in making and otherwise preparing and typing the reports of examination herein provided for. Fees for such examinations must be charged by the department of banking and financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 9. AMENDMENT. Section 7-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7-05-01. Examination and fees therefor. The commissioner of banking and financial institutions, at least once each year or oftener if the commissioner deems it necessary or expedient, shall examine into the affairs of all domestic associations doing business in this state. Whenever persons holding ten percent or more of the subscribed shares of any association file a written application with the commissioner requesting the commissioner to make an examination of any such association, the commissioner shall make such examination forthwith. Upon the completion of any examination of any association made by the commissioner or under the direction of the commissioner, the association so examined shall pay to the state treasurer a fee. Fees for such examination must be charged by the department of banking and financial institutions for the examinations provided for by this section at the rate of sixty-five dollars per day for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with such examination or report of examination and for time used by each deputy examiner, or other person or persons in making and otherwise preparing and typing the reports of examinations herein provided for. The minimum fee for any such examination, however, is one hundred dollars at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. The commissioner shall report such payment to the state banking board, and if any such association is delinquent more than twenty days in making such payment, the state banking board may make an order suspending the functions of such association until payment of the amount due, together with. The commissioner may assess a penalty of five dollars additional for each day of delay in payment. All fees collected by the state treasurer must be credited to the general fund. In lieu of the examinations herein required, the commissioner may accept any examination made by a federal home loan bank, the federal home loan bank board, or, if an insured association, by the federal savings and loan insurance corporation. The commissioner may in his or her discretion conduct a joint examination with said described federal agencies. Fees and penalties under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 10. AMENDMENT. Section 13-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-03-04. License - Application and fees. Application for a license shall be in writing, under oath, and in the form prescribed by the commissioner of banking and financial institutions. The application shall give the location where the business is to be conducted and shall contain such further information as the commissioner may require, including the names and addresses of the partners, officers, directors, or trustees, and of such of the principal owners or members as will provide the basis for the investigations and findings contemplated by section 13-03-05. At the time of making such application, the applicant shall pay to the commissioner the sum of three hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of one two hundred dollars for the annual license fee. Fees must be deposited in the financial institutions regulatory fund.

SECTION 11. AMENDMENT. Subsection 1 of section 13-03-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. At least once each thirty months the commissioner or duly authorized representatives shall make an examination of the place of business of each licensee and of the loans, transactions, books, papers, annual reports, and records of such licensee so far as they pertain to the business licensed under this chapter. The actual cost of every examination shall be charged by the commissioner for every licensee so examined. Such costs shall be paid to the state treasurer. Fees for such examinations must be charged by the department of banking and financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 12. AMENDMENT. Section 13-03.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-03.1-05. Application and fees. Application for a license shall be in writing, under oath, and in the form prescribed by the administrator. The application shall give the location where the business is to be conducted and shall contain such further information as the administrator may require, including the names and addresses of the partners, officers, directors, or trustees, and of such of the principal owners or members as will provide the basis for the investigations and findings contemplated by section 13-03.1-06. When making such application, the applicant shall pay to the department of banking and financial institutions include payment in the amount of three hundred dollars, which is not subject to refund, as a fee for investigating the application, and one two hundred dollars for the annual license fee. Fees must be deposited in the financial institutions regulatory fund.

SECTION 13. AMENDMENT. Subsection 1 of section 13-03.1-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. At least once each thirty months the administrator or a duly authorized representative shall make an examination of the loans, business, and records of every licensee. In addition, for the purpose of rediscovering violations of this chapter or securing

information lawfully required, the administrator may at any time investigate the loans, business, and records of any lender. For these purposes the administrator shall have free and reasonable access to the offices, places of business, and records of the lender. The actual costs of the examination shall be paid by the licensee. Fees for such examinations must be charged by the department of banking and financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 14. AMENDMENT. Section 13-04.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-04.1-04. Fee and bond to accompany application for money broker license. The application for license shall be accompanied by the annual license fee for a money broker license, which is fixed at one hundred dollars, in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members as will provide the basis for the investigation and findings contemplated by section 13-04.1-03. At the time of making such application, the applicant shall include payment in the sum of three hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of two hundred dollars for the annual license fee, and by provide a surety bond in the sum of twenty-five thousand dollars. Fees must be deposited in the financial institutions regulatory fund.

SECTION 15. AMENDMENT. Subdivision a of subsection 1 of section 13-04.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. May make such public or private investigation within or outside this state as it deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. The licensee shall pay an investigation fee and must be charged by the department of banking and financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visitation provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 16. AMENDMENT. Section 13-05-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-05-04. Fee and bond to accompany application for collection agency license. The application for a collection agency license shall be accompanied by the annual license fee for a collection agency license, which is fixed at one hundred dollars. If the collection agency directly solicits,

collects, and handles money owed; the application shall be accompanied by in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members as will provide the basis for the investigation and findings contemplated by section 13-05-03. At the time of making such application, the applicant shall include payment in the sum of three hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of two hundred dollars for the annual license fee, and provide a surety bond in the sum of ~~five~~ twenty thousand dollars. Fees must be deposited in the financial institutions regulatory fund.

SECTION 17. AMENDMENT. Subsection 2 of section 13-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Conduct investigations and have authority to make an examination of any licensee or his place of business, including all records of such business, and to subpoena witnesses any time they have reason to believe such is necessary. The licensee shall pay an examination or visitation fee and must be charged by the department of banking and financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examination or visitation provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 18. AMENDMENT. Subsection 1 of section 51-17-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An investigation fee of ~~two hundred fifty~~ three hundred dollars, which shall not be subject to refund ~~but which, if the license be granted, shall be in addition to the annual license fee for the first license year or part thereof.~~ Fees must be deposited in the financial institutions regulatory fund.

SECTION 19. AMENDMENT. Section 51-17-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-17-10. Annual license fee. Each licensee shall pay to the commissioner annually on or before June fifteenth of each year a license fee of ~~one~~ two hundred dollars, which must be deposited in the financial institutions regulatory fund.

SECTION 20. REPEAL. Section 6-06-08.1 of the North Dakota Century Code is hereby repealed.

SECTION 21. EFFECTIVE DATE. The new assessment rates and fees established by this Act apply to all assessments and fees attributable to the fiscal year beginning July 1, 1989, regardless of when paid.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 97

HOUSE BILL NO. 1117
(Committee on Industry, Business and Labor)
(At the request of the Department of
Banking and Financial Institutions)

FINANCIAL INSTITUTION CIVIL PENALTIES

AN ACT to create and enact a new section to chapter 6-01 of the North Dakota Century Code, relating to the assessment of civil money penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Assessment of civil money penalties.

1. The state banking board and the state credit union board may assess a civil money penalty against a financial institution or financial corporation, including state-chartered banks, credit unions, trust companies, and savings and loan associations, or an officer, director, employee, agent, or person participating in the conduct of the affairs of the financial institution or corporation, upon finding one or more of the following:
 - a. Failure to comply with a permanent or temporary cease and desist order that has been voluntarily consented to or issued pursuant to section 6-01-04.2;
 - b. Failure to comply with a final order that has been voluntarily consented to or issued following formal proceedings under chapter 28-32;
 - c. Payment of dividends in violation of section 6-03-36;
 - d. Loans and leases to one borrower or concern which exceed the limitations set forth in sections 6-03-59 and 6-03-59.1;
 - e. Loans to directors, officers, and employees in violation of section 6-03-60;
 - f. The intentional filing of inaccurate or misleading call reports required by section 6-03-70;
 - g. Violations of loan limitations under subsection 7 of section 6-06-12;
 - h. Loans in violation of section 6-06-14; or

- i. Failure to file notice of change of control under section 6-08-08.1.
2. The board shall commence administrative proceedings to assess civil money penalties by serving a complaint on the respondent stating the factual basis for the board's belief that a violation has occurred and the amount of civil penalties that the board seeks to impose. The complaint must contain a notice of an opportunity for an administrative hearing conducted under chapter 28-32. The date for the hearing must be set not less than thirty days after the date the complaint is served upon the respondent. If assessment of civil money penalties are proposed based on conditions described in subdivisions c through i of subsection 1 of this section, a complaint may not be filed unless the respondent has been provided with prior orders, examination reports, or other written communications, and has willfully refused to take corrective action that the respondent was capable of taking at the time.
3. If the respondent fails to answer the complaint within twenty days of its service, or if a hearing is held and the board concludes that the record so warrants, the board may enter an order imposing civil money penalties upon the respondent. The assessment order is effective and enforceable immediately upon service or upon a date specified in the order, and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.
4. In determining the amount of civil penalty imposed, the board shall consider the good faith of the financial institution or the person being assessed, the gravity of the violation and any previous violations. The board may not impose a civil money penalty in excess of five thousand dollars for each occurrence and one hundred dollars per day for each day that the violation continues after service of an order. Any civil money penalties collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund, if the fund is established by the legislative assembly.

Approved March 14, 1989

Filed March 15, 1989

CHAPTER 98

HOUSE BILL NO. 1122
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

FINANCIAL INSTITUTION RECORDS

AN ACT to amend and reenact subsections 1 and 4 of section 6-01-07.1, subsection 1 of section 6-03-69, subsection 1 of section 6-06-02, subdivision e of subsection 5 of section 6-06-06, subsection 2 of section 6-06-08, and subsection 2 of section 6-06-35 of the North Dakota Century Code, relating to department of banking and financial institutions records, report of examining committee of banks, and the powers of credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 4 of section 6-01-07.1 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. All facts and information obtained by the commissioner or the department in the following ways are confidential, except as provided in subsections 2 through 7:
 - a. In the course of examining financial institutions under the supervision of the commissioner, or in the course of receiving audit reports, reports of examining committee and reports of annual meetings of stockholders and directors of such institutions. The reports of examination may be made available to the financial institution's board of directors, or the board's specifically authorized agents or representatives, but the reports remain the property of the department.
 - b. From the federal reserve system, federal deposit insurance corporation, federal home loan bank board, ~~or~~ national credit union administration, or any state bank or credit union supervisors of other states.
 - c. In the course of investigating an institution under the supervision of the commissioner, until such investigation is complete.
 - d. In the course of a special investigation being carried out at the request of the governor or any court.
 - e. In the form or nature of an application for a charter, license or permission which meets any of the following criteria:
 - (1) Trade secrets and commercial or financial information.

- (2) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.
- (3) Information contained in the application form which is in the nature of examination report information.

Determination of what required application information falls within each category shall be made by the body before which the application is brought.

4. The commissioner may, in the commissioner's discretion, furnish information as to matters of mutual interest to an official or examiner of the federal reserve system, federal deposit insurance corporation, federal home loan bank board, ~~or~~ national credit union administration, or any state bank or credit union supervisors of other states.

SECTION 2. AMENDMENT. Subsection 1 of section 6-03-69 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Examination by the board of directors or its examining committee. When this method is employed, the examination shall be conducted and the report submitted in ~~January and~~ July of each year.

SECTION 3. AMENDMENT. Subsection 1 of section 6-06-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The applicants shall execute a certificate of organization, in triplicate, by the terms of which they agree to be bound, stating the name and the location of the proposed credit union, the names and addresses of the subscribers to the certificate and the number of shares subscribed by each, and the par value of the shares of the credit union, which may not exceed fifty dollars each. The commissioner shall prescribe the application form.

SECTION 4. AMENDMENT. Subdivision e of subsection 5 of section 6-06-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- e. In notes or bonds secured by ~~mortgage~~ a security interest or lien upon unencumbered personal property in this state, if such investment does not exceed seventy-five percent of the actual cash value of the property ~~mortgaged~~ secured.

* SECTION 5. AMENDMENT. Subsection 2 of section 6-06-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Credit unions must be examined at least once each eighteen months by the commissioner, or with the commissioner's approval and the approval of the state credit union board, credit unions may be examined annually by a certified public accountant or the North Dakota credit union league. In lieu of the examinations herein required, the commissioner may accept any examination made or obtained by the national credit union administration, and may in his or her discretion conduct a joint examination with said federal agency. Examinations made by the commissioner or deputy examiners

* NOTE: Subsection 2 of Section 6-06-08 was also amended by section 7 of House Bill No. 1196, chapter 96.

~~must be made without previous notice to the credit union.~~ If the examination is not made by the commissioner, the expense of such examination must be borne by the credit union examined and such examination must be in such form and contain such information as the commissioner may require. Two copies of such examination must be filed with the commissioner within thirty days after completion of the examination and must be approved by the commissioner.

SECTION 6. AMENDMENT. Subsection 2 of section 6-06-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. a. A federal credit union, organized under the laws of the United States may be converted into a state credit union by (1) complying with all federal requirements requisite to enabling it to convert to a state credit union or to cease being a federal credit union, (2) filing with the state credit union board proof of such compliance, satisfactory to the commissioner, ~~and~~ (3) filing with the commissioner an organization certificate and bylaws, both in triplicate, as required by section 6-06-02, and (4) granting authority to the department to conduct an examination prior to the conversion date, if determined necessary by the department.
- b. When the commissioner has been satisfied that all of such requirements, and all other requirements of the North Dakota law have been complied with, the commissioner shall notify the applicants and the state credit union board of that fact, and the board shall instruct the secretary of state to issue a charter in accordance with section 6-06-02. Upon issuance of the charter, the federal credit union shall become a state credit union and ceases to be a federal credit union. The state credit union is vested with all of the assets and shall continue responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 99

HOUSE BILL NO. 1581
(Kretschmar, Vander Vorst, Stofferahn)

FINANCIAL INSTITUTION LOAN LOSSES

AN ACT to create and enact a new section to chapter 6-03 and a new section to chapter 6-06 of the North Dakota Century Code, relating to the amortization and deferral of certain loan losses by state-chartered banks and credit unions; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

1. A bank that complies with the requirements of this section and which has at least twenty-five percent of its total loans in agricultural loans may amortize and defer its losses on agricultural loans and its losses resulting from a reappraisal or sale of real or personal property acquired by the bank in connection with an agriculturally related loan, provided the loss was not a result of fraud or criminal abuse on the part of an officer, director, or shareholder of the bank. Agricultural loans include loans made to finance agricultural production, loans secured by farmland, loans secured by farm machinery, or other loans that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan.
2. At least sixty days before the end of the calendar quarter for which the bank intends to amortize and defer its losses as permitted by this section, the bank shall notify the board in writing and submit to the board its written plan for amortizing and deferring its eligible losses. At a minimum the bank's amortization and deferral plan must include a list and description of the specific losses which the bank intends to amortize and defer and a realistic capital plan for restoring the bank's capital to the level required by the board not later than the end of the amortization period.
3. Within thirty business days after the date of mailing of the notification required by subsection 2, the bank's intention to amortize and defer its losses as stated in its notification is deemed approved unless the board issues its preliminary order denying the amortization and deferral proposed by the bank and provides the bank with an opportunity for the bank to request a hearing before the board. Any hearing must be upon at least ten work days' notice to the bank. The board's preliminary order denying a bank's intended loss amortization and deferral plans may be made by the board after consultation with the commissioner and the preliminary order may be issued without a formal meeting. If

the bank does not make its written request for a hearing, the bank is deemed to have withdrawn its notification of its intention to amortize and defer its losses and may not amortize and defer its losses. When deciding on an amortization and deferral proposal, the board shall examine and consider all relevant factors including:

- a. Whether the losses the bank intends to amortize and defer are eligible for such treatment under this section;
 - b. That the bank is in need of capital restoration and whether by the end of the amortization period set forth in this section the bank's capital will be restored to the level required by the board under a realistic capital plan as approved by the board and considering the assets classified loss by a state or federal examiner;
 - c. Whether, during the period of amortization and deferral permitted by this section, the bank will remain viable and fundamentally sound; and
 - d. Whether the bank is well managed.
4. The losses that are eligible for amortization and deferral under this section are limited to those losses on agricultural loans which the bank incurred or incurs between 1984 and 1991, inclusive, and those losses on reappraisals or sales of real or personal property that the bank acquired in connection with an agriculturally related loan, owned no earlier than January 1, 1983, and any additional property that it acquires between January 1, 1983, and December 31, 1991, inclusive.
 5. To be permitted under this section, all amortization of deferred loss must be computed over a period not to exceed seven years on a quarterly straight-line basis commencing in the first quarter after the loan was or is charged off so as to be fully amortized not later than December 31, 1998. A bank that is permitted to amortize its losses under this section may restate its capital and other relevant accounts in accordance with the instructions for the reports it submits to the commissioner under section 6-03-70.
 6. Any determination of the value of the assets of a bank that is permitted to amortize and defer losses, including, determinations of asset value under section 6-01-09, must incorporate at face value the full amount of any asset account established and maintained by the bank in conformity with this section. Any determination of the level or amount of capital that is maintained by a bank that is permitted to amortize and defer loss, including a determination of capital and surplus under section 6-03-59 must incorporate at face value the full amount of any deferred loss capital account established and maintained by the bank in conformity with this section.
 7. A bank that is amortizing and deferring its losses as permitted by this section shall fully adhere to its approved capital plan unless it has obtained the prior approval of the board for a modification to its plan.

8. If the bank fails to continue to meet the requirements under which authorization was granted pursuant to this section or to comply with the capital plan, the board shall notify the bank of its intent to revoke authorization for deferral of losses. The bank has sixty days from receipt of the notice in which to submit objections and reasons why authorization should continue. If no written objections are received within sixty days, the revocation is final. If the bank submits objections, they will be considered and a final decision, or a request for additional information, must be made within the next thirty days.
9. The bank shall provide the board, upon request, with any information the board deems necessary to monitor the bank's amortization, its compliance with conditions, and its continued eligibility.
10. Acceptance of a bank for loss amortization does not foreclose any administrative action against the bank that the board may deem appropriate.

SECTION 2. A new section to chapter 6-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

1. A credit union that complies with the requirements of this section and which has at least twenty-five percent of its total loans in agricultural loans may amortize and defer its losses on agricultural loans and its losses resulting from a reappraisal or sale of real or personal property acquired by the credit union in connection with an agriculturally related loan, provided the loss was not a result of fraud or criminal abuse on the part of an officer or director. Agricultural loans include loans made to finance agricultural production, loans secured by farmland, loans secured by farm machinery, or other loans that a credit union proves to be sufficiently related to agriculture for classification as an agricultural loan.
2. At least sixty days before the end of the calendar quarter for which the credit union intends to amortize and defer its losses as permitted by this section, the credit union shall notify the board in writing and submit to the board its written plan for amortizing and deferring its eligible losses. At a minimum the credit union's amortization and deferral plan must include a list and description of the specific losses which the credit union intends to amortize and defer and a realistic capital plan for restoring the credit union's capital to the level required by the board not later than the end of the amortization period.
3. The board shall approve or deny the amortization and deferral proposal within sixty days from receipt of the notification. If the board denies a credit union's application for loan loss deferral, the credit union is not entitled to a formal administrative hearing to protest the board's determination but may raise its objections to the board's decision in any pending or future administrative proceeding against the credit union. When deciding on an amortization and deferral proposal the board shall examine and consider all relevant factors including:

- a. Whether the losses the credit union intends to amortize and defer are eligible for such treatment under this section;
 - b. That the credit union is in need of capital restoration and whether by the end of the amortization period set forth in this section the credit union's capital will be restored to the board under a realistic capital plan as approved by the board and considering the assets classified loss by a state or federal examiner;
 - c. Whether, during the period of amortization and deferral permitted by this section, the credit union will remain viable and fundamentally sound; and
 - d. Whether the credit union is well managed.
4. The losses that are eligible for amortization and deferral under this section are limited to those losses on agricultural loans which the credit union incurred or incurs between 1984 and 1991, inclusive, and those losses on reappraisals or sales of real or personal property that the credit union acquired in connection with an agriculturally related loan, owned no earlier than January 1, 1983, and any additional property that it acquires between January 1, 1983, and December 31, 1991, inclusive.
 5. To be permitted under this section, all amortization of deferred loss must be computed over a period not to exceed seven years on a quarterly straight-line basis commencing in the first quarter after the loan was or is charged off so as to be fully amortized not later than December 31, 1998. A credit union that is permitted to amortize its losses under this section may restate its capital and other relevant accounts in accordance with the instructions for the reports it submits to the commissioner under section 6-06-08.
 6. Any determination of the value of the assets of a credit union that is permitted to amortize and defer losses, including, determinations of asset value under sections 6-01-09 and 6-06-08.2 must incorporate at face value the full amount of any asset account established and maintained by the credit union in conformity with this section. Any determination of the level or amount of capital that is maintained by a credit union that is permitted to amortize and defer loss, must incorporate at face value the full amount of any deferred loss capital account established and maintained by the credit union in conformity with this section.
 7. A credit union that is amortizing and deferring its losses as permitted by this section shall fully adhere to its approved capital plan unless it has obtained the prior approval of the board for a modification to its plan.
 8. If the credit union fails to continue to meet the requirements under which authorization was granted pursuant to subsection 3 or to comply with the capital plan, the board shall notify the credit union of its intent to revoke authorization for deferral of losses. The credit union has sixty days from receipt of the notice in which it may submit objections and reasons why authorization should continue. If no written objections are received within sixty days,

the revocation is final. If the credit union submits objections, they will be considered and a final decision, or a request for additional information, must be made within the next thirty days.

9. The credit union shall provide the board, upon request, with any information the board deems necessary to monitor the credit union's amortization, its compliance with conditions, and its continued eligibility.
10. Acceptance of a credit union for loss amortization does not foreclose any administrative action against the credit union that the board may deem appropriate.

SECTION 3. EXPIRATION DATE. This Act is effective through December 31, 1998, and after that date is ineffective.

Approved April 15, 1989
Filed April 17, 1989

CHAPTER 100

SENATE BILL NO. 2341
(Lips)

BANK EMPLOYEE INDEMNIFICATION

AN ACT to amend and reenact section 6-03-02.1 of the North Dakota Century Code, relating to indemnification of bank employees, directors, and officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-02.1. Indemnification of bank employees, directors, and officers. Each banking association has the same power to indemnify any employee, director, or officer, or former employee, director, or officer of the bank against expenses actually and necessarily incurred by him in connection with the defense of any action, suit, or proceeding in which he is made a party by reason of being or having been such an employee, director, or officer, except in relation to matters as to which he is adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty. Such indemnification is not deemed exclusive of any other rights to which such employee, director, or officer may be entitled, under any bylaw, vote of shareholders, or otherwise as provided for business corporations in section 10-19.1-91.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 101

HOUSE BILL NO. 1312
(R. Larson)

BANKS INVESTMENTS

AN ACT to amend and reenact subsection 1 of section 6-03-47.2 of the North Dakota Century Code, relating to the investments of state banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-03-47.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Bonds, notes, or debentures of any corporation rated at "A" or higher by a nationally recognized rating service approved by the state banking board, provided that such investments may not be made to exceed for any one corporation ~~ten~~ twenty-five percent of the ~~combined~~ unimpaired capital and surplus of the banking association; and

Approved April 3, 1989
Filed April 3, 1989

CHAPTER 102

SENATE BILL NO. 2317
(W. Meyer)

FEDERAL AGRICULTURAL MORTGAGE INVESTMENTS

AN ACT to create and enact a new section to chapter 6-03, a new subdivision to subsection 1 of section 6-09-15, and a new section to chapter 54-17 of the North Dakota Century Code, relating to bank investment in federal agricultural mortgage corporation stock, Bank of North Dakota authority to make agricultural real estate loans, and a trust fund to participate in the federal agricultural mortgage secondary market program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Bank investment in federal agricultural mortgage corporation stock. Financial institutions under the jurisdiction of the state banking board may invest in stock and equity instruments of the federal agricultural mortgage corporation. The state banking board may adopt rules governing investments by North Dakota financial institutions in the stock and equity instruments of the federal agricultural mortgage corporation.

* SECTION 2. A new subdivision to subsection 1 of section 6-09-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Make agricultural real estate loans in order to participate in the agricultural mortgage secondary market program established pursuant to the Agricultural Credit Act [Pub. L. 100-233, 101 Stat. 1686, 12 U.S.C. 2279aa-2279aa-14].

SECTION 3. A new section to chapter 54-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

State trust created - Agricultural mortgage secondary market. The industrial commission may establish a trust for the purpose of participating as an agricultural mortgage marketing facility in the agricultural mortgage secondary market program established pursuant to the Agricultural Credit Act [Pub. L. 100-233, 101 Stat. 1686, 12 U.S.C. 2279aa-2279aa-14]. The industrial commission may take any action necessary to qualify as a certified facility.

Approved March 22, 1989
Filed March 23, 1989

* NOTE: Section 6-09-15 was also amended by section 6 of Senate Bill No. 2252, chapter 110.

CHAPTER 103

HOUSE BILL NO. 1427
(Representatives O. Hanson, Belter)
(Senators Axtman, Krauter)

BANK SERVICE CORPORATIONS

AN ACT to amend and reenact section 6-03-49.1 of the North Dakota Century Code, relating to bank service corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-49.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-49.1. Bank investment in service corporation - Service corporation services and activities. Subject to the approval of the state banking board, any bank may invest not more than ten percent of paid in and unimpaired capital and unimpaired surplus in stocks, bonds, debentures, or other obligations of any North Dakota corporation organized as a bank service corporation having its principal place of business in the state and operated exclusively for the purpose of providing for such bank and one or more other banks, bank services which the banks would otherwise be required or permitted to provide for on an individual bank basis. The term bank services in this section ~~means~~ includes services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed by a bank. Payment for rent earned, goods sold and delivered, or services rendered prior to the making of the payment is not an investment.

A bank service corporation may be chartered under the laws of this state with shareholders limited to state and national banks located within the state to provide all the services, except deposit taking, that all the banks that are its shareholders can offer directly to their own customers at any place in the state where they can offer their services including owning and administering a credit card program for customers of banks and engaging in activities incidental to banking services and other activities that further or facilitate the corporate purposes of a bank or subsidiaries of a bank, so long as such services may be lawfully performed by both its national bank shareholders under the laws of the United States and its state bank shareholders under the laws of this state.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 104

SENATE BILL NO. 2420
(Satrom)

AFRICAN DEVELOPMENT BANK OBLIGATIONS AS SECURITIES

AN ACT to amend and reenact section 6-05-04 of the North Dakota Century Code, relating to surety deposit investments; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 6-05-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-04. Surety deposit investments required - Securities in which investment may be made. Every corporation organized under this chapter and every foreign corporation before engaging in similar comparable activities within this state shall either deposit with the state treasurer, with any federal reserve bank, or with the Bank of North Dakota, securities as provided by this section. The deposit may not be less than fifty thousand dollars or less than one-sixth of the par value of the capital stock of the corporation, whichever is the greater. However, no corporation is required to deposit more than five hundred thousand dollars. ~~Where~~ If the deposit is made with a federal reserve bank, the deposit certificate must authorize the state treasurer to cause such deposit, in part or in whole, to be transferred to the state treasurer upon the state treasurer's demand. An original of such certificate of deposit must be furnished to the state treasurer. The securities so deposited must be:

1. Bonds of the United States or of this state;
2. Bonds of other states which have the approval of the state auditor and the commissioner of banking and financial institutions;
3. Bonds or obligations of any township, school district, city, or county within this state, whose total bonded indebtedness does not exceed five percent of the then assessed valuation thereof;
4. Bonds or promissory notes secured by first mortgages or deeds of trust upon unencumbered real estate situated within the state of North Dakota worth two and one-half times the amount of the obligation so secured;
5. Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development or the African Development Bank; or
6. United States treasury bills or notes of an agency thereof.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 1989
Filed March 23, 1989

* NOTE: Section 6-05-04 was also amended by section 2 of Senate Bill No. 2363, chapter 113.

CHAPTER 105

HOUSE BILL NO. 1330
(Goetz)

CREDIT UNION SALES TAX PAYMENT

AN ACT to amend and reenact section 6-06-29 of the North Dakota Century Code, relating to taxation of credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-29. Taxation of credit unions. Any credit union organized under this chapter or under the Federal Credit Union Act is exempt from all taxation now or hereafter imposed by the state or any municipality within the state or any local taxing authority and no law which taxes corporations in any form, or the shares thereof, or the accumulations thereon, shall apply to any such credit union; except that any real property and any tangible personal property owned by any credit union organized under this chapter or under the Federal Credit Union Act is subject to taxation to the same extent as other similar property is taxed and purchases by credit unions are subject to sales or use tax. The shares of credit unions are not subject to any stock transfer tax, either when issued or when transferred from one member to another. The participation by the credit union in any unemployment insurance funds, or social security fund, or old-age fund, may not be deemed a waiver of the tax immunities hereby granted.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 106

HOUSE BILL NO. 1526
(Representatives Mertens, R. Larson)
(Senator Langley)

BAD CHECK PRESENTATION

AN ACT to amend and reenact subsection 1 of section 6-08-16 of the North Dakota Century Code, relating to nonsufficient fund check offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-08-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A person may not, for himself, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation make, draw, utter, or deliver any check, draft, or order for the payment of money upon a bank, banker, or depository, if at the time of such making, drawing, uttering, or delivery, or at the time of presentation for payment if the presentation for payment is made within ~~one week~~ fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, or order in full upon its presentation. Violation of this subsection is a class B misdemeanor.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 107

HOUSE BILL NO. 1057
(Legislative Council)
(Interim Judiciary Committee)

NO ACCOUNT CHECKS

AN ACT to amend and reenact section 6-08-16.1 of the North Dakota Century Code, relating to issuing a check or draft without an account; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08-16.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08-16.1. Issuing check or draft without account - Penalty. Any person who issues any check, draft, or order upon any bank or depository, for the payment of money, and, at the time of such issuance does not have an account with ~~such~~ the bank or depository, is guilty of a class A misdemeanor.

Approved April 3, 1989
Filed April 3, 1989

CHAPTER 108

HOUSE BILL NO. 1148
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

FOREIGN BANK FIDUCIARY FEES

AN ACT to amend and reenact section 6-08-26 of the North Dakota Century Code, relating to the filing fee for foreign banks and trust companies serving as fiduciaries in this state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08-26. Requirements of foreign bank or trust company serving as fiduciary in state. Before qualifying or serving in this state in any fiduciary capacity as defined in section 6-08-25, such bank or trust company shall file in the office of the secretary of state a filing fee of twenty-five dollars, a copy of its charter certified by its secretary, and a power of attorney designating the said secretary of state or his successor in office as the person upon whom all notices and processes issued by any court of this state may be served in any action or proceeding relating to any trust, estate, or matter within this state in respect of which such bank or trust company is acting in any fiduciary capacity with like effect as personal service on such bank or trust company. Such power of attorney is irrevocable so long as any such liability remains outstanding against such bank or trust company in this state. Upon receipt of such notice or process with a filing fee of twenty-five dollars, it is the duty of the said secretary of state forthwith to forward the same by registered or certified mail to such bank or trust company at the address stated in the said power of attorney, and such bank or trust company shall comply with the provisions of chapter 6-05, insofar as the provisions of said chapter pertain to banks or trust companies.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 109

HOUSE BILL NO. 1444
(Representatives Brokaw, Myrdal, Shockman)
(Senators Kelsh, Wogsland)

AGRICULTURAL MEDIATION SERVICE

AN ACT to create and enact a new subsection to section 6-08.1-02, a new subsection to section 6-08.1-03, and sections 6-09.10-10 and 6-09.10-11 of the North Dakota Century Code, relating to disclosure of customer information by financial institutions, mediation records and meetings, and authority to receive and expend federal funds; to amend and reenact sections 6-09.10-03, 6-09.10-04, 6-09.10-04.1, 6-09.10-05, and subsection 3 of section 6-09.10-08.5 of the North Dakota Century Code, relating to fees charged for assistance provided to farmers and creditors, changing the name of the farm credit counseling program, compensation for credit review board members, requests for assistance, and liability; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-08.1-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Disclosure by a financial institution to the commissioner of agriculture that it has given a customer notice of the availability of the North Dakota agricultural mediation service.

SECTION 2. A new subsection to section 6-08.1-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

For the purpose of notifying the commissioner of agriculture that a financial institution has notified a customer of the availability of the North Dakota agricultural mediation service.

SECTION 3. AMENDMENT. Section 6-09.10-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.10-03. Farm Credit Counseling Program North Dakota agricultural mediation service - Powers - Compensation and expenses - Fees. The board shall meet at the call of the chairman, as is necessary to fulfill its duties under this chapter. The department of agriculture shall administer the farm credit counseling program agricultural mediation service. The commissioner of agriculture shall establish a farm credit counseling program an agricultural mediation service to disseminate information to farmers concerning farm credit problems, and provide advice and counseling regarding assistance to seek to resolve farm credit problems. The commissioner shall appoint an administrator of the farm credit counseling program to administer the program agricultural mediation service. The commissioner shall hire staff and, negotiators, and mediators who may mediate between a farmer who has requested assistance and the farmer's creditors, either of whom may

request assistance. The board may charge the farmer and each of the farmer's creditors a reasonable fee for any assistance provided to a farmer, such funds to be used to continue the program service until June 30, ~~1989~~ 1991. Fees charged to the farmer's creditors are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators ~~and~~, staff, and mediators hired under this section. Board members are entitled to receive fifty sixty-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

SECTION 4. AMENDMENT. Section 6-09.10-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.10-04. Request for assistance - Negotiation - Mediation.

- 1- Any farmer or creditor may request the assistance of a negotiator from the administrator. Upon receipt of the request, the negotiator may enter into negotiations with the lender on behalf of the farmer and upon consent of the farmer and the creditor to mediation, the negotiator or mediator shall encourage and assist the farmer and the farmer's creditors to reach a voluntary settlement.
- 2- The negotiator shall negotiate with the lender in an attempt to extend the term of the loan; reduce the dollar amount of payments under the loan; or otherwise negotiate a settlement that will allow the farmer to reside in the farm residence and allow the farmer to continue to produce agricultural commodities. Any change in the terms of the mortgage must be approved by the lender and the farmer.

SECTION 5. AMENDMENT. Section 6-09.10-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.10-04.1. Liability. The board, commissioner, administrator, staff, and negotiators, and mediators are not subject to any liability arising from any actions undertaken on behalf of a farmer or between a farmer and the farmer's creditors in attempting to reach a settlement with a lender.

SECTION 6. AMENDMENT. Section 6-09.10-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.10-05. Interest rate buydowns by the board.

1. If the board, or its authorized agent, is unable to mediate a settlement in the negotiation of with regard to a farmer's debt, the board may approve the purchase, refinancing, or redemption of the farmer's home-quarter. If the board approves the purchase, refinancing, or redemption of the home-quarter, it shall subsidize the interest rate paid by the farmer after credit has been obtained by the farmer from any governmental or private financial institution or agency.
2. The board may only approve an interest subsidy if the farmer has the financial ability to meet all payments and financial

responsibilities, including the payment of principal and interest on loans subsidized under this chapter.

3. The board may defer or waive payment, restructure payment, or enter into other reasonable loan servicing options with a farmer who has received an interest subsidy, upon proof of financial hardship, or if the farmer, after deferral, restructure, or other loan servicing options, has the ability to make all the payments and meet all the financial responsibilities with regard to the change in payments.

SECTION 7. AMENDMENT. Subsection 3 of section 6-09.10-08.5 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Cooperate with the **farm credit counseling program** agricultural mediation service and existing informational and referral networks among farmers, farmer advocates, small business persons, and others concerned with the economic crisis in agricultural and small business concern areas.

SECTION 8. Section 6-09.10-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

6-09.10-10. Mediation - Open records and meetings exception. Information created, collected, and maintained by the agricultural mediation service regarding the finances of specific farmers and creditors is confidential and is not subject to the open records requirements of section 44-04-18. All mediation meetings, or meetings involving the board, staff, negotiators, or mediators wherein the finances of specific farmers and creditors is discussed, are confidential, closed meetings and are not subject to the open meetings requirements of section 44-04-19.

SECTION 9. Section 6-09.10-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

6-09.10-11. Commissioner of agriculture - Authorization. The commissioner of agriculture is authorized to receive and expend any federal, private, or other funds that become available for the purpose of defraying the expenses of the agricultural mediation service.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 110

SENATE BILL NO. 2252
(Committee on State and Federal Government)
(At the request of the Bank of North Dakota)

BANK OF NORTH DAKOTA ADMINISTRATION

AN ACT to create and enact two new sections to chapter 6-09, a new section to chapter 6-09.5, and a new section to chapter 6-09.6 of the North Dakota Century Code, relating to the advisory board of directors to the Bank of North Dakota, audit of the community water facility loan fund, and audit of the developmentally disabled, chronically mentally ill, and physically disabled facility loan programs; to amend and reenact sections 6-09-02, 6-09-04, 6-09-05, 6-09-11, 6-09-15, 6-09-26, and 6-09-27 of the North Dakota Century Code, relating to the execution of instruments on behalf of the Bank and to the powers and duties of the Bank of North Dakota; and to repeal sections 6-09-03, 6-09-09, 6-09-12, 6-09-14, 6-09-15.2, 6-09-15.3, 6-09-15.6, 6-09-15.7, 6-09-15.8, 6-09-26.1, 6-09-33, 6-09.1-01, 6-09.1-02, 6-09.1-03, and 6-09.9-06 of the North Dakota Century Code, relating to powers and duties of the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 6-09 of the North Dakota Century Code are hereby created and enacted to read as follows:

Declaration and finding of public purpose - Bank of North Dakota advisory board of directors. To enlist the help of private enterprise and to encourage more active use of the purposes for which the Bank of North Dakota was created, the governor shall appoint an advisory board of directors to the Bank of North Dakota consisting of seven persons, at least two of whom must be officers of banks, the majority of the stock of which is owned by North Dakota residents, and at least one of whom must be an officer of a state or federally chartered financial institution. The governor shall appoint a chairman, vice chairman, and secretary from the advisory board of directors. The term of the directors is four years. The industrial commission shall define the duties and fix the compensation of the advisory board of directors.

Authority of the advisory board of directors to the Bank of North Dakota. The advisory board of directors to the Bank of North Dakota shall:

1. Meet regularly with the management of the Bank of North Dakota to review the Bank's operations to determine whether recommendations should be made by the board to the industrial commission relating to improved management performance, better customer service, and overall improvement in internal methods, procedures, and operating policies of the Bank.

2. Make recommendations to the industrial commission relating to the establishment of additional objectives for the operation of the Bank of North Dakota.
3. Make recommendations to the industrial commission concerning the appointment of officers of the Bank of North Dakota.
4. Meet regularly with the industrial commission to present any recommendations concerning the Bank of North Dakota.
5. In addition to the foregoing and pursuant to authorization from the industrial commission, act on behalf of the Bank with respect to the powers and functions of the Bank.

SECTION 2. AMENDMENT. Section 6-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-02. Industrial commission to operate Bank - Business of Bank. The industrial commission shall operate, manage, and control the Bank of North Dakota, locate and maintain its places of business, of which the principal place must be within the state, and make and enforce orders, rules, regulations, and bylaws for the transaction of its business. The business and financial transactions of the Bank, in addition to other matters specified in this chapter, may include anything that any bank or bank holding company lawfully may do, except as it is restricted by the provisions of this chapter. This provision may not be held in any way to limit or qualify either the powers of the industrial commission granted by nor the functions of said Bank as defined in this chapter. The powers of the industrial commission and the functions of the Bank must be implemented through actions taken and policies adopted by the industrial commission.

SECTION 3. AMENDMENT. Section 6-09-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-04. Commission to employ president and employees - Compensation, operation, and maintenance expenditures limited to appropriations, revenue, or capital. The industrial commission shall appoint a president, and may appoint and employ such subordinate officers, employees, and agents as it may judge expedient and in the interests of the state, and shall define the duties, designate the titles, and fix the compensation of all such persons. The commission may ~~constitute~~ designate the president, other officers or employees as its ~~general~~ agent in respect to the functions of the Bank, subject to its supervision, limitation, and control. The total compensation of such appointees and employees, together with other expenditures for the operation and maintenance of the Bank, shall remain within the appropriation, revenues, or capital lawfully available in each year for such purpose purposes.

SECTION 4. AMENDMENT. Section 6-09-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-05. Removal and discharge of appointees. The industrial commission may remove and discharge any and all persons appointed in the exercise of the powers granted by this chapter, whether by the commission or by the president of the Bank, and any such removal may be made whenever in the judgment of the commission the public interests require it. All

appointments and removals contemplated by this chapter must be made as the commission deems fit to promote the efficiency of the public service.

SECTION 5. AMENDMENT. Section 6-09-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-11. State bank deposits in Bank of North Dakota available funds—Bank a clearinghouse. Funds deposited by state banks in the Bank of North Dakota are deemed "available funds" within the meaning of that term as used in section 6-03-37. For banks that make the Bank of North Dakota a reserve depository, it may perform the functions and render the services of a clearinghouse, including all facilities for providing domestic and foreign exchange, and may rediscount paper, on such terms as the industrial commission shall provide.

* SECTION 6. AMENDMENT. Section 6-09-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-15. Bank may make loans - Loan limitations.

1. The Bank of North Dakota may:

- a. Make loans to and purchase securities issued by instrumentalities of this state. Such loans shall be repaid with interest to the Bank.
- b. Make loans to state or national banks, bank holding companies, institutions which are part of the federal farm credit system, and North Dakota central credit union.
- c. Participate with the following institutions and agencies in loans being made by them on such terms and under such rules and regulations as the industrial commission may determine:
 - (1) State or national banks.
 - (2) Bank holding companies.
 - (3) Savings and loan associations.
 - (4) Subsidiary corporations of state banking associations approved by the state banking board pursuant to section 6-03-38.
 - (5) Credit unions.
 - (6) Federally chartered lending agencies or institutions.
- d. Buy and sell federal funds, excess reserves, bankers' acceptances, participation loans, and all securities issued by the United States government or its instrumentalities.
- e. Invest its funds in bonds, notes, or debentures of any corporation incorporated under the laws of any state of the United States rated at "A" or higher by a nationally recognized rating service approved by the industrial commission and short-term commercial and finance company paper rated A-1 or P-

* NOTE: Section 6-09-15 was also amended by section 2 of Senate Bill No. 2317, chapter 102.

- ~~f. Such investments shall not be made to exceed for any one corporation ten percent of the combined capital and surplus of the Bank.~~
- ~~f. Make loans to holders of Bank of North Dakota certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security.~~
- ~~g. Make loans to actual farmers who are residents of this state, if such loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed sixty-five percent of the value of the security.~~
- ~~h. Make United States insured and guaranteed loans as specifically authorized by law.~~
- ~~i. Make loans which are eligible to be guaranteed pursuant to chapter 15-62.1.~~
- ~~2. The Bank of North Dakota shall not otherwise make loans or give its credit to any individual, association, or private corporation.~~
- ~~3. The Bank of North Dakota shall not loan more than thirty percent of its combined capital and surplus, nor in addition thereto, more than forty percent of its deposits on real estate security, excluding those loans insured or guaranteed by the United States government or its agencies.~~

Powers. The Bank of North Dakota may:

1. Make, purchase, or hold loans:

- a. To state or federally chartered lending agencies or institutions, or any other financial institutions.
- b. To holders of Bank of North Dakota certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security.
- c. To actual farmers who are residents of this state, if the loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed sixty-five percent of the value of the security.
- d. That are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities.
- e. That are eligible to be guaranteed under chapter 15-62.1.
- f. To individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the state.
- g. To nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501 (c)(3)], the proceeds of the loans to be used

- for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the state parks and recreation department.
- h. Under Public Law No. 99-198 [99 Stat. 1534, 7 U.S.C. 1932 et seq.] to nonprofit corporations for the purpose of relending loan funds to rural businesses.
- i. Under title 7, Code of Federal Regulations, part 1948, subpart C; part 1951, subparts F and R; and part 1955, subparts A, B, and C, to finance businesses and community development projects in rural areas.
- j. Obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the Bank.
- k. To instrumentalities of this state.
- l. As otherwise provided by this chapter or other statutes.
2. Purchase participation interests in loans made or held by banks, bank holding companies, state or federally chartered lending agencies or institutions, or any other financial institutions.
3. Invest its funds:
- a. In conformity with policies of the industrial commission.
- b. In an export trading company organized and doing business in this state through the purchase of shares of stock.
- c. In a public venture capital corporation organized and doing business in this state through the purchase of shares of stock.
4. Buy and sell federal funds.
5. Lease, assign, exchange, transfer, convey, grant, pledge, or mortgage all real and personal property, title to which has been acquired in any manner.
6. Acquire real or personal property or property rights by purchase, lease, or the exercise of the right of eminent domain and may construct, remodel, and repair buildings.
7. Receive deposits from any source and deposit its funds in any bank or other financial institution.
8. Perform all acts and do all things necessary, convenient, advisable, or desirable to carry out the powers expressly granted or necessarily implied in this chapter through or by means of its president, officers, agents, or employees or by contracts with any person, firm, or corporation.

SECTION 7. AMENDMENT. Section 6-09-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-26. Name in which business conducted and titles taken - Execution of ~~written~~ instruments. All business of the Bank must be conducted under the name of "The Bank of North Dakota". Title to property pertaining to the operation of the Bank must be obtained and conveyed in the name of "The State of North Dakota, doing business as The Bank of North Dakota". ~~Written instruments~~ Instruments must be executed in the name of the state of North Dakota, signed by two members of the industrial commission, of whom the governor must be one, or by the manager of the Bank of North Dakota within the scope of his authority so to do as defined by the industrial commission. Within the scope of authority granted by the industrial commission, the president may execute instruments on behalf of the Bank, including any instrument granting, conveying, or otherwise affecting any interest in or lien upon real or personal property. Other officers, employees of and legal counsel to the Bank may execute instruments on behalf of the Bank when authorized by the industrial commission. Any instrument executed prior to the effective date of this Act by the president, an attorney for the Bank, or an officer or employee of the Bank, and otherwise proper, is valid and effective.

SECTION 8. AMENDMENT. Section 6-09-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-27. Civil actions on Bank transactions - Name of parties - Service - Venue. Civil actions may be brought against the state of North Dakota on account of claims for relief claimed to have arisen out of transactions connected with the operation of the Bank of North Dakota upon condition that the provisions of this section are complied with. In such actions, the state shall be designated as "The State of North Dakota, doing business as The Bank of North Dakota", and the service of process shall be made upon the president of the Bank. The actions may be brought in the same manner and are subject to the same provisions of law as other civil actions. The action shall be brought, however, in the county where the Bank of North Dakota has its principal place of business, in Burleigh County except as provided in sections ~~section~~ 28-04-01, 28-04-02, 28-04-03, 28-04-04, and 28-04-06.

SECTION 9. A new section to chapter 6-09.5 of the North Dakota Century Code is hereby created and enacted to read as follows:

Audit and costs of administration. The industrial commission is responsible for contracting with a certified public accounting firm to audit the revolving fund as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the fund, must be paid for by the fund.

SECTION 10. A new section to chapter 6-09.6 of the North Dakota Century Code is hereby created and enacted to read as follows:

Audit and costs of administration. The industrial commission is responsible for contracting with a certified public accounting firm to audit the loan funds established by this chapter as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the loan funds, must be paid for by the funds.

* SECTION 11. REPEAL. Sections 6-09-03, 6-09-09, 6-09-12, 6-09-14, 6-09-15.2, 6-09-15.3, 6-09-15.6, 6-09-15.7, 6-09-15.8, 6-09-26.1, 6-09-33, 6-09.1-01, 6-09.1-02, 6-09.1-03, and 6-09.9-06 of the North Dakota Century Code are hereby repealed.

Approved April 10, 1989
Filed April 12, 1989

* NOTE: Section 6-09.9-06 was also repealed by section 4 of House Bill No. 1211, chapter 117.

CHAPTER 111

SENATE BILL NO. 2204
(Committee on Agriculture)
(At the request of the Bank of North Dakota)

BEGINNING FARMER LOAN FUND

AN ACT to amend and reenact section 6-09-15.5 of the North Dakota Century Code, relating to the beginning farmer revolving real estate loan fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-15.5 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-15.5. Bank loans to beginning farmers - Revolving loan fund - Requirements.

1. A revolving loan fund must be maintained in the Bank of North Dakota for the purpose of making loans to North Dakota beginning farmers, ~~as defined under subsection 2 of section 57-38-67,~~ for the purchase of agricultural real estate. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest on loans made from the fund are hereby appropriated for the purpose of providing loans in accordance with the provisions of this section.
2. The revolving loan fund and loans made from the fund must be administered and supervised by the Bank of North Dakota. The Bank may deduct a service fee for administering the fund from interest payments received on loans. An application for a loan from the fund must be made to the Bank and, upon approval, a loan must be made from the fund in accordance with the provisions of this section.
3. A loan made from the fund may not exceed ~~fifty~~ sixty-five percent of the appraised value of the agricultural real estate to be acquired with the loan proceeds, with the actual percentage to be determined by the Bank. The Bank may do all things and acts, ~~may take such security,~~ and may establish additional terms and conditions as deemed necessary to make a loan under this section. The Bank may take a second mortgage as security for a loan from the fund if a beginning farmer's real estate financing involves a loan from a source other than the state and may take additional security.
4. A loan made from the fund must bear interest at a maximum rate of four percent per year ~~for the first ten years of the loan and at a rate of six percent per year after ten years.~~

5. The maximum term of the a loan is ten years unless at the end of the ten year term the commissioner of agriculture extends the loan for a five year period.
6. The industrial commission is responsible for contracting with a certified public accounting firm to audit the fund as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the fund, must be paid for by the fund.
7. The Bank shall adopt policies to implement this section.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 112

SENATE BILL NO. 2501
(Senators Kelsh, Wogsland, Hanson)
(Representatives Nicholas, Dalrymple, Gerntholz)

BEGINNING FARMER LOAN FUND TRANSFER

AN ACT to create and enact a new section to chapter 6-09 of the North Dakota Century Code, relating to transfers from the Bank of North Dakota profits to the beginning farmer revolving loan fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Transfer - Beginning farmer revolving loan fund. The Bank of North Dakota shall transfer an amount equal to one and one-half million dollars of the Bank's preceding year's profits from the Bank's accumulated and undivided profits to the beginning farmer revolving loan fund as established in section 6-09-15.5 on July 1, 1989, and on July first of each year thereafter through July 1, 1992.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 113

SENATE BILL NO. 2363
(Heigaard)

CUSTODY OF STATE SECURITIES

AN ACT to provide for custody by the Bank of North Dakota of certain securities; and to amend and reenact sections 6-05-04, 6-05-05, 6-05-27, 7-07-03, 7-07-04, 7-07-12, 39-16-10, 39-16.1-15, subsection 1 of section 39-16.1-17, and subsection 1 of section 39-16.1-19 of the North Dakota Century Code, relating to the Bank of North Dakota acting as the custodian of securities that must be deposited with the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Bank of North Dakota - Custodian of securities. Notwithstanding any other provision of law to the contrary, the Bank of North Dakota shall replace the state treasurer as the custodian of all securities that are required to be deposited with the state except that the state treasurer is the custodian of all securities resulting from the investment of funds by the state treasurer, or except as otherwise required by this Act.

* SECTION 2. AMENDMENT. Section 6-05-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-04. Surety deposit investments required - Securities in which investment may be made. Every corporation organized under this chapter and every foreign corporation before engaging in similar comparable activities within this state shall either deposit with ~~the state treasurer, with~~ any federal reserve bank, ~~or with~~ the Bank of North Dakota, ~~or any other custodian approved by the commissioner,~~ securities as provided by this section. The deposit may not be less than fifty thousand dollars or less than one-sixth of the par value of the capital stock of the corporation, whichever is the greater. However, no corporation is required to deposit more than five hundred thousand dollars. ~~Where the deposit is made with a federal reserve bank, the~~ The deposit certificate must authorize the ~~state treasurer commissioner~~ to cause such deposit, in part or in whole, to be transferred to the ~~state treasurer commissioner~~ upon the ~~state treasurer's commissioner's~~ demand. An original of such certificate of deposit must be furnished to the ~~state treasurer commissioner~~. The securities so deposited must be:

1. Bonds of the United States or of this state;
2. Bonds of other states which have the approval of the state auditor and the commissioner of banking and financial institutions;
3. Bonds or obligations of any township, school district, city, or county within this state, whose total bonded indebtedness does not exceed five percent of the then assessed valuation thereof;

* NOTE: Section 6-05-04 was also amended by section 1 of Senate Bill No. 2420, chapter 104.

4. Bonds or promissory notes secured by first mortgages or deeds of trust upon unencumbered real estate situated within the state of North Dakota worth two and one-half times the amount of the obligation so secured;
5. Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development; or
6. United States treasury bills or notes of an agency thereof.

SECTION 3. AMENDMENT. Section 6-05-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-05. Certificate of deposit — State treasurer's duties. Whenever any such corporation assigns, transfers, and delivers to the state treasurer commissioner, or a designated agent, the securities described in section 6-05-04 and all evidences of such investment, he shall execute and deliver to the corporation a certificate of such deposit, and thereupon, the said corporation may commence and carry on business under the provisions of this chapter. The state treasurer and his successors in office commissioner, or a designated agent, shall hold the said securities so deposited with him as collateral security for the depositors and creditors of the corporation, and for the faithful execution of any trusts which may be imposed lawfully upon and accepted by such corporation. The corporation from time to time may withdraw the said securities or any part thereof from the state treasurer commissioner, or a designated agent, upon depositing with him other securities of equal amount and value and of the kinds specified in section 6-05-04. Until otherwise ordered by a court of competent jurisdiction, the said treasurer commissioner, or a designated agent, shall pay over to such corporation the interest and dividends which he collects upon such securities. Any corporation having a larger deposit with the state treasurer commissioner, or a designated agent, than is required by this chapter must be allowed at any time to withdraw its excess deposit.

SECTION 4. AMENDMENT. Section 6-05-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-27. Commissioner to order increase in security deposit - When. Whenever it appears to the commissioner, from an examination of the business of any such corporation, that the deposit made by it with the state treasurer, as hereinbefore required, is insufficient to insure the safety of its deposit, trust, and contingent liabilities, he shall make an order, as hereinafter provided, requiring an increase of such deposit. Such company immediately upon receipt of such order shall deposit with the state treasurer commissioner, or a designated agent, other and further securities of the kind, class, and value designated in section 6-05-04 in an amount sufficient to comply with said order.

SECTION 5. AMENDMENT. Section 7-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7-07-03. Securities to be deposited - Surety bond. A foreign corporation before doing business in this state shall deposit with the state treasurer Bank of North Dakota, any federal reserve bank, or any other custodian approved by the commissioner one hundred thousand dollars in cash or bonds of the United States, bonds of any state of the United States, bonds of any county or municipal corporation in the state of North Dakota, or

mortgages which are first liens on improved and productive real estate located within this state worth at least twice the amount of the liens. Such securities must be approved in advance by the commissioner of banking and financial institutions. The commissioner has authority to require such foreign corporation to deposit additional securities and to order a change in any of the securities so deposited, at any time. Such deposit must be held as security for all claims of residents of this state against such foreign corporation, and is liable for all judgments or decrees against such corporation. Said securities may not be released until all its obligations to residents of this state have been fully performed and discharged. Such foreign corporation may collect and use the interest on any securities so deposited as long as it fulfills its obligations and complies with the provisions of this title. It also may exchange them for other securities of equal value, if such exchange is approved by the commissioner. Any foreign corporation, in lieu of the deposit of securities as herein provided, may deposit with the commissioner a surety company bond, satisfactory to him, in the sum of one hundred thousand dollars, which must be conditioned for the payment of any judgment entered against such foreign corporation by any court of competent jurisdiction in this state, in favor of any resident of this state. Such judgment creditor has the right to bring suit on such bond in his own name in the county in which such judgment is rendered, and any resident of this state having a claim against such foreign corporation may bring suit in his own name against the surety company by joining such surety company and such foreign building and loan corporation as parties defendant.

SECTION 6. AMENDMENT. Section 7-07-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7-07-04. Securities deposited. Upon deposit with the state treasurer custodian by such foreign corporation of the securities as provided for in this chapter, the state treasurer shall issue his receipt in duplicate therefor, delivering the original to the commissioner of banking and financial institutions and the copy to such depositor. The state treasurer and his surety are responsible for the safekeeping of such securities which must be released by him only upon the written order of the commissioner the deposit certificate must authorize the commissioner to cause the deposit, in whole or in part, to be transferred to the commissioner upon the commissioner's demand. An original of the deposit certificate must be furnished to the commissioner.

SECTION 7. AMENDMENT. Section 7-07-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7-07-12. Unsatisfied judgments - Sale of securities. If any resident of this state recovers judgment against a foreign corporation and such judgment is not satisfied within thirty days after the entry thereof, the judgment creditor or his attorney may prepare and file with the commissioner of banking and financial institutions an affidavit setting forth the fact of the recovery of the judgment, that the same has remained unpaid for thirty days, and that no proceedings are pending for the vacation of such judgment or for an appeal therefrom, together with the petition of such creditor for the sale of sufficient of the securities of the judgment debtor on deposit with the state treasurer Bank of North Dakota, any federal reserve bank, or any other custodian approved by the commissioner sufficient to satisfy said judgment. The judgment creditor or his attorney shall serve a copy of such affidavit and petition on the foreign corporation by registered or certified mail addressed to its principal office or place of business, and proof of

such mailing must be filed with the commissioner. Unless such foreign corporation furnishes to the commissioner satisfactory proof of the payment of the judgment within ten days after the filing of the affidavit and petition herein mentioned, the commissioner, or a designated agent, shall issue an order to the state treasurer for the sale of sufficient of the securities of such corporation, at current market prices, to pay the judgment in full, together with five percent thereon to cover his services and expenses. After a sale of securities as herein provided, such foreign corporation shall transact no new business in this state until the deficiency of securities caused by such sale has been made good by further deposit.

SECTION 8. AMENDMENT. Section 39-16-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16-10. Deposit of security with state treasurer Bank of North Dakota - Release - How payment made.

1. Security deposited in compliance with the requirements of this chapter must be placed by the commissioner in the custody of the state treasurer Bank of North Dakota and must be applied as in subsection 2 only to the payment of a judgment rendered against the person on whose behalf the deposit was made, for damages arising out of the accident in question in an action at law, begun not later than one year after the date of such accident, or within one year after the date of deposit of any security under subsection 3 of section 39-16-07, and such deposit or any balance thereof must be returned to the depositor or his personal representative, when evidence satisfactory to the commissioner has been filed with him that there has been a release from liability, or a final adjudication of nonliability, or a confession of judgment, or a duly acknowledged agreement, in accordance with subsection 3 of section 39-16-06, or whenever, after the expiration of one year from the date of the accident, or within one year after the date of deposit of any security under subsection 3 of section 39-16-07, the commissioner is given reasonable evidence that there is no such action pending and no judgment rendered in such action left unpaid. Upon certification by the commissioner the state treasurer Bank of North Dakota shall return any security deposited with him under the provisions of this chapter to the person entitled thereto except as provided for in subsection 3.
2. Such deposit must be held by the state treasurer Bank of North Dakota to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against the person for whom such deposit was made, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle in the accident which resulted in the requirement for the deposit of such security. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution arises out of a suit for damages as aforesaid.
3. All payments and refunds made from cash deposits in the state treasury Bank of North Dakota under this chapter must be made upon a warrant-check issued by the office of management and budget after

submission of a voucher signed by the commissioner and approved by the office of the budget.

SECTION 9. AMENDMENT. Section 39-16.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16.1-15. Deposit of cash with ~~state treasurer~~ the Bank of North Dakota.

1. Proof of financial responsibility may be evidenced by the certificate of the ~~state treasurer~~ Bank of North Dakota that the person named therein has deposited with ~~him~~ it twenty-five thousand dollars in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of twenty-five thousand dollars. The ~~state treasurer~~ Bank of North Dakota may not accept any such deposit and issue a certificate therefor and the commissioner may not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides.
2. Such deposit must be held by the ~~state treasurer~~ Bank of North Dakota to satisfy, in accordance with the provisions of this chapter, any execution on a judgment issued against such person making the deposit for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of damages to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such deposit was made. Money or securities so deposited shall not be subject to attachment or execution unless such attachment or execution arises out of a suit for damages as aforesaid.

SECTION 10. AMENDMENT. Subsection 1 of section 39-16.1-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The commissioner shall consent to the cancellation of any bond or certificate of insurance or the commissioner shall direct and the ~~state treasurer~~ Bank of North Dakota shall return any money or securities to the person entitled thereto upon the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter.

SECTION 11. AMENDMENT. Subsection 1 of section 39-16.1-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The commissioner shall upon request consent to the immediate cancellation of any bond or certificate of insurance, or the commissioner shall direct and the ~~state treasurer~~ Bank of North Dakota shall return to the person entitled thereto any money or securities deposited pursuant to this chapter as proof of financial responsibility, or the commissioner shall waive the requirement of filing proof, in any of the following events:
 - a. At any time after three years from the date such proof was required when, during the three-year period preceding the request, the commissioner has not received record of a conviction or a forfeiture of bail which would require the

revocation of the license or operating privilege, or both, of the person by or for whom such proof was furnished.

- b. The death of the person on whose behalf such proof was filed or the permanent incapacity of such person to operate a motor vehicle.
- c. The surrender of his license to the commissioner by the person who has given proof.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 114

SENATE BILL NO. 2216
(Committee on Natural Resources)
(At the request of the Bank of North Dakota)

BANK OF NORTH DAKOTA PROPERTY

AN ACT to create and enact a new section to chapter 6-09 and two new sections to chapter 15-08.1 of the North Dakota Century Code, relating to transfer of certain property to and the management of certain property by the Bank of North Dakota; to amend and reenact sections 15-08.1-03, 15-08.1-05, 15-08.1-06, and 15-08.1-08 of the North Dakota Century Code, relating to property held by the Bank of North Dakota or the board of university and school lands; and to repeal 15-08.1-02, 15-08.1-04, and 15-08.1-07 of the North Dakota Century Code, relating to transfer of interests in realty from the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Sale and leasing of acquired agricultural real estate. The sale and leasing of all agricultural real estate acquired by the Bank of North Dakota through foreclosure or deed in lieu of foreclosure must be done in accordance with chapter 15-07 and rules of the board of university and school lands. In the case of a lease by the party holding the right of redemption, that party has the right to purchase at any time.

SECTION 2. AMENDMENT. Section 15-08.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08.1-03. Transfer of future possessory interests in real property. ~~All contracts for deed, tracts of real property, reserved minerals, mineral leases, surface leases, and all possessory interests in real property of whatever nature and derived from whatever source mineral interests~~ that may be acquired by the Bank of North Dakota, together with future increments, accruals, and recoveries coming, arising, or resulting from any of such property or from dealing therewith in whatever form, shall be transferred, assigned, conveyed, and granted to the state of North Dakota, acting by and through the board of university and school lands. All transfers made in accordance with this section are self-executing; no evidence other than the provisions of this chapter shall be required to establish the fact of transfer of title to the state of North Dakota, acting by and through the board of university and school lands. Proper and sufficient delivery of all title documents shall be conclusively presumed.

SECTION 3. AMENDMENT. Section 15-08.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08.1-05. Existing contracts and encumbrances recognized. The transfers made by this chapter shall be subject to all existing contracts, rights, easements, and encumbrances outstanding heretofore made or sanctioned by the Bank of North Dakota and shown in the files and records of the Bank of North Dakota or the board of university and school lands.

SECTION 4. AMENDMENT. Section 15-08.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08.1-06. Duties and powers of the board. The board of university and school lands shall manage, operate, and supervise all properties transferred to it by this chapter; shall have full power of sale or lease with respect to any and all such property; may enter into surface or mineral leases; may enforce all rights of the owner by all lawful means in its own name; may make and execute all instruments of release or conveyance as agreements were made heretofore, or are made hereafter; and may establish, charge, and collect fees for the management of property acquired under this chapter. The board shall pay the costs incurred in carrying out its duties under this chapter from the fees and income derived under this chapter.

SECTION 5. AMENDMENT. Section 15-08.1-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-08.1-08. Income - Expenses - Reimbursement - Creation of lands and minerals trust. The income derived from the sale, lease, and management of the lands mineral interests acquired by the board of university and school lands pursuant to this chapter must be apportioned to the entity from which the property was acquired. The expenses of sale, lease, and management of the property acquired from each entity must first be deducted from the income apportioned to the respective entity. If the property was acquired from a trust, the remainder after expenses must be credited to that trust. If the property was acquired from the Bank of North Dakota, the remainder after expenses must be credited to the Bank of North Dakota until the Bank has been reimbursed for the total principal, interest, and costs due the Bank at the time of transfer. The balance must, after deducting the expenses of sale, lease, and management of the property, be deposited in a fund to be known as the lands and minerals trust. The corpus and interest of such trust may be expended as the legislative assembly may provide.

SECTION 6. A new section to chapter 15-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Transfer of present possessory interests - Self-executing. All possessory interests in real property other than minerals which were conveyed by this chapter to the state of North Dakota acting by and through the board of university and school lands prior to the effective date of this Act, and which are still held by the board on the effective date of this Act, are hereby conveyed to the state of North Dakota doing business as the Bank of North Dakota. This transfer is self-executing and no evidence other than this Act is required to establish the transfer of title to the Bank.

SECTION 7. A new section to chapter 15-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Validation of conveyances. All conveyances of interests in real property to the board of university and school lands which were effected by this chapter prior to the effective date of this Act are hereby validated and confirmed, and all contracts, agreements, conveyances, or other transfers of interests in real property made by the board of university and school lands under the authority of this chapter prior to the effective date of this Act are hereby validated and confirmed, and are binding upon the Bank of North Dakota.

SECTION 8. REPEAL. Sections 15-08.1-02 and 15-08.1-07 of the North Dakota Century Code, and section 15-08.1-04 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 115

HOUSE BILL NO. 1177
(Committee on Political Subdivisions)
(At the request of the Bank of North Dakota)

MUNICIPAL BOND BANK

AN ACT to amend and reenact sections 6-09.4-03, 6-09.4-06, 6-09.4-09, 6-09.4-10, 6-09.4-12, 6-09.4-13, 6-09.4-14, 6-09.4-16, 6-09.4-17, 6-09.4-18, 6-09.4-19, 6-09.4-20, and 6-09.4-21 and subdivision 1 of subsection 1 of section 28-32-01 of the North Dakota Century Code, relating to the North Dakota municipal bond bank; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-03. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Bond bank" means the North Dakota municipal bond bank created by section 6-09.4-04.
2. "Bondholder" or "holder" or any similar term when used with reference to a bond ~~or note~~ of the bond bank means any person who is the bearer of any outstanding bond ~~or note~~ of the bond bank.
3. "Bonds" or "bond" means ~~bonds~~ evidences of indebtedness of the bond bank issued pursuant to this chapter.
4. "Fully marketable form" means a municipal security duly executed and accompanied by an approving legal opinion of a ~~bond~~ counsel whose opinions are generally accepted by the bond bank or other purchasers of municipal bonds securities.
5. "Municipal security" means ~~a bond or evidence of debt an evidence of indebtedness~~ issued by a political subdivision and payable from taxes or from rates, revenues, charges, or assessments, or distributions of revenue pursuant to a state appropriation or statutory or constitutional provision or under currently existing contracts of the bureau of Indian affairs, ~~but does not include bonds or payable from a pledge of property, but does not include an evidence of indebtedness issued pursuant to chapter 40-57, and also means a pledge of property or revenues by a municipal pipeline authority.~~
6. "Political subdivision" means a political subdivision of the state or an agency or authority of a political subdivision of the state as authorized by law including, but not limited to, a county, city,

school district, township, park district, airport authority, city or county housing authority, municipal parking authority, municipal pipeline authority, irrigation district, board of drainage commissioners, fire protection district, or water resource district and any member-owned association, nonprofit corporation, or similar entity or organization established and organized primarily for operating a rural water distribution system.

7. "Required debt service reserve" means the amount required to be on deposit in the reserve fund.
8. "Reserve fund" means the North Dakota municipal bond bank reserve fund or funds created as provided in section 6-09.4-10.
9. "Revenues" means any or all fees, charges, moneys, profits, payments of principal of or interest on municipal securities and other investments, investment income, revenues, appropriations, and all other income derived or to be derived by the bond bank under this chapter.

SECTION 2. AMENDMENT. Section 6-09.4-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-06. Lending and borrowing powers generally. The bond bank is authorized to lend money to political subdivisions through the purchase of municipal securities ~~of political subdivisions~~ which, in the opinion of the attorney general, are legally sufficient properly eligible for purchase by the bond bank under this chapter. The bond bank is authorized to lend money to political subdivisions through the purchase and holding of municipal securities of political subdivisions which are in the form of a pledge of property or revenues of a project where the political subdivisions are expressly authorized to pledge the property or revenues with the bond bank. The bond bank may hold such ~~bonds~~ municipal securities for any length of time it finds to be necessary. The bond bank, for the purposes authorized by this chapter, is authorized to issue its bonds payable solely from the ~~funds~~ revenues available to the bond bank which are authorized or pledged for payment of bond bank obligations, and to otherwise assist political subdivisions as provided in this chapter.

Bonds of the bond bank issued under this chapter shall not be in any way a debt or liability of the state and shall not constitute a loan of the credit of the state or create any debt or debts, liability or liabilities, on behalf of the state, or be or constitute a pledge of the faith and credit of the state, but all such bonds shall be payable solely from revenues ~~or funds~~ pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the bond bank is obligated to pay such principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on such bonds. Specific funds pledged to fulfill the bond bank's obligations are obligations of the bond bank.

All expenses incurred in carrying out the purposes of this chapter are payable solely from revenues or funds provided or to be provided under this chapter and nothing in this chapter may be construed to authorize the bond bank to incur any indebtedness or liability on behalf of or payable by the state.

SECTION 3. AMENDMENT. Section 6-09.4-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-09. Pledges. Any pledge of revenue ~~or other moneys~~ made by the industrial commission ~~as security for bond bank bonds~~ is valid and binding from time to time when the pledge is made. The industrial commission may also pledge ~~other~~ assets of the Bank of North Dakota as security for ~~its bond bank bonds~~. The revenues or other moneys so pledged and thereafter received by the bond bank are immediately subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the bond bank, regardless of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be filed or recorded, except in the records of the bond bank.

SECTION 4. AMENDMENT. Subsection 1 of section 6-09.4-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The bond bank shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the state for the purpose of such fund, all proceeds of bonds required to be deposited therein by terms of any contract between the bond bank and its bondholders or any resolution of the bond bank with respect to such proceeds of bonds, any other moneys or funds of the bond bank which it determines to deposit therein, and any other moneys made available to the bond bank only for the purposes of such fund from any other source or sources. Moneys in the reserve fund shall be held and applied solely to the payment of the interest on and the principal of bonds and sinking fund payments as the same become due and payable and for the retirement of bonds, including payment of any redemption premium required to be paid when any bonds are redeemed or retired prior to maturity. Moneys in the reserve fund may not be withdrawn therefrom if such withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable and sinking fund payments and for the retirement of bonds in accordance with the terms of any contract between the bond bank and its bondholders and for the payments on account of which interest or principal or sinking fund payments or retirement of bonds, other moneys of the bond bank are not then available in accordance with the terms of any such contract. Required debt service reserve shall be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the bond bank and its bondholders to be raised in the then current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds, and sinking fund payments required by the terms of any such contracts to sinking funds established for the payment or redemption of such bonds.

SECTION 5. AMENDMENT. Section 6-09.4-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-12. Participation by bond bank in bonds held by bank on effective date. The bond bank may ~~borrow an amount of money, through the issuance of its bonds,~~ issue its bonds from time to time in an amount

sufficient to offset the amount of money the Bank of North Dakota has invested in municipal securities on July 1, 1975 purchase municipal securities held by the Bank of North Dakota at a price established by mutual agreement between the bond bank and the Bank of North Dakota.

SECTION 6. AMENDMENT. Section 6-09.4-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-13. Personal liability. Neither the members of the industrial commission nor any person executing bonds or notes issued pursuant to this chapter is liable personally on such bonds or notes by reason of the issuance thereof.

SECTION 7. AMENDMENT. Section 6-09.4-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-14. Purchase of bonds of bond bank. The bond bank has the power to purchase bonds of the bond bank out of any funds or money of the bond bank available therefor. The bond bank may hold, cancel, or resell such bonds or notes subject to and in accordance with agreements with holders of its bonds.

SECTION 8. AMENDMENT. Section 6-09.4-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-16. Tax exemptions. All property of the bond bank and all bonds issued under this chapter shall be deemed to be serving essential public and governmental purposes and such property and such bonds and notes so issued, their transfer and the income therefrom, including any profits made on the sale thereof, shall at all times be exempt from taxation within the state, county, and municipal taxes of any and all kinds.

SECTION 9. AMENDMENT. Section 6-09.4-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-17. Exemption of property from execution sale. All property of the bond bank is exempt from levy and sale by virtue of an execution and no execution or other judicial process may issue against the same nor may any judgment against the bond bank be a charge or lien upon its property; provided, that nothing contained in this chapter applies to or limits the rights of the holder of any bonds to pursue any remedy for the enforcement of any pledge or lien given by the bond bank on its revenues or other moneys. Any action or proceeding in any court to set aside a resolution authorizing the issuance of bonds or notes by the bond bank under this chapter or to obtain any relief upon the ground that such resolution is invalid must be commenced within ten days after the adoption of said resolution by the bond bank industrial commission. After the expiration of such period of limitation, no claim for relief or defense founded upon the invalidity of the resolution or any of its provisions may be asserted nor may the validity of the resolution or any of its provisions be open to question in any court on any ground whatever.

SECTION 10. AMENDMENT. Section 6-09.4-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-18. Insurance or guaranty. The bond bank is authorized and empowered to obtain from any department or agency of the United States of

America or nongovernmental insurer any insurance or guaranty, or from a financial institution a letter of credit, to the extent such insurance, guaranty, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any bonds or notes issued by the bond bank, or on any municipal securities of governmental units purchased or held by the bond bank, pursuant to this chapter; and to enter into any agreement or contract with respect to any such insurance or guaranty, or letter of credit and pay any required fee, unless the same would impair or interfere with the ability of the bond bank to fulfill the terms of any agreement made with the holders of its bonds.

SECTION 11. AMENDMENT. Section 6-09.4-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-19. Remedies on default of municipal securities. In the event of default by a political subdivision in the payment of interest on or principal of any municipal securities owned or held by the bond bank, the bond bank ~~shall~~ may proceed to enforce payment, pursuant to applicable provisions of law, of such interest or principal or other amount then due and payable.

SECTION 12. AMENDMENT. Section 6-09.4-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-20. Form of municipal securities and investments. All municipal securities or other investments of moneys of held by the bond bank as permitted or provided for under this chapter must at all times be purchased and held in fully marketable form, subject to provision for any registration in the name of the bond bank. All municipal securities at any time purchased, held, or owned by the bond bank must, upon delivery to the bond bank, be accompanied by documentation, including approving legal opinion of a bond counsel whose opinions are generally accepted by purchasers of municipal bonds, certification, and guaranty as to signatures, and certification as to absence of litigation, in fully marketable form and accompanied by such other or further documentation as shall from time to time be required in the municipal bond market by the bond bank.

SECTION 13. AMENDMENT. Section 6-09.4-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-21. Presumption of validity. After issuance, all bonds or notes of the bond bank are conclusively presumed to be fully authorized and issued under the laws of the state, and any person or governmental unit is estopped from questioning their authorization, sale, issuance, execution, or delivery by the bond bank.

SECTION 14. AMENDMENT. Subdivision 1 of subsection 1 of section 28-32-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The industrial commission with respect to the activities of the Bank of North Dakota, the North Dakota housing finance agency, the North Dakota municipal bond bank, and the North Dakota mill and elevator association.

SECTION 15. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 8, 1989
Filed March 8, 1989

CHAPTER 116

SENATE BILL NO. 2035
(Legislative Council)
(Interim Budget Committee on Government Finance)

VARIOUS CONTINUING APPROPRIATIONS ELIMINATED

AN ACT to amend and reenact sections 6-09.7-01, 19-01-07, 20.1-06-05, 37-01-38, 54-38-09, and 54-44-04.4 of the North Dakota Century Code, relating to continuing appropriations of the fuel production facility loan program of the Bank of North Dakota, the department of health and consolidated laboratories contract servicers fund, moneys obtained from removing undesirable fish, the national guard operating fund, and revenues of the alcohol and drug abuse program of the department of human services, and to payment of unemployment compensation claims; and to repeal sections 6-07-46 and 54-44-04.3 of the North Dakota Century Code, relating to continuing appropriations of unclaimed dividends and other money delivered to the department of banking and financial institutions and unemployment compensation assessments of the office of management and budget.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.7-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.7-01. Guarantee loan program - Administration - Advisory board. The Bank of North Dakota shall administer the state guarantee loan program as provided in this chapter. The advisory board of directors to the Bank of North Dakota appointed pursuant to chapter 6-09.1 shall act in an advisory capacity concerning the program. ~~The Bank, upon recommendation of the advisory board, and subject to approval of the industrial commission, may expend moneys from the interest earned from the principal balance in the reserve fund established pursuant to this chapter as may be necessary to implement the program.~~

SECTION 2. AMENDMENT. Section 19-01-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-07. Fees - Disposition. All revenues received and fees and charges collected under ~~the provisions of this title shall must~~ be properly accounted for daily by the department, and recorded by counties from which the fees and charges are received. The department shall forward all moneys so collected to the state treasurer monthly, and the treasurer shall place the same in the state general fund of the state. Funds may be accepted from cities, counties, states, federal agencies, and private organizations for contract services of analytical and inspection work. Such funds ~~shall must~~ be remitted by the department to the state treasurer and deposited in a special account in the state treasury, designated the "consolidated the operating fund of the department of health and consolidated laboratories contract servicers fund" to be used exclusively to carry out the intent and

purposes of this section: Such funds are retained by the department for payment of expenditures incurred in rendering such services and are hereby appropriated to the department to be disbursed by the department in accordance with the intent and purposes of this section: Funds in excess of fifty thousand dollars received and disbursed during any biennial period pursuant to this section shall require emergency commission approval.

SECTION 3. AMENDMENT. Section 20.1-06-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-06-05. Removing undesirable fish. The commissioner, any person authorized by ~~him the commissioner~~, or anyone contracting with ~~him the commissioner~~, may kill or take fish from waters of this state in any manner prescribed by the commissioner when in ~~his the commissioner's~~ judgment it is in the best interest of public fishing. All such fish shall be disposed of at the commissioner's discretion. Money derived from such disposal ~~may must~~ be used to defray removal costs: ~~Money so derived in excess of removal costs is hereby appropriated deposited in the state treasury and credited to the game and fish fund.~~ All money received and expended shall be itemized, and written records thereof ~~shall must~~ be kept in the commissioner's office. Any person desiring to contract with the commissioner to take such fish, as determined by the commissioner, from the waters of this state, by means of not more than five hoop-nets or traps, not more than five setlines of ten hooks, or not more than one hundred feet [30.48 meters] of seine, ~~shall must~~ be awarded the contract upon payment of the appropriate fee. These contracts ~~shall must~~ not specify the disposition of the fish.

SECTION 4. AMENDMENT. Section 37-01-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-01-38. National guard operating fund. All income, collections, and reimbursements of the North Dakota national guard from the United States and from armory rentals must be deposited in the state treasury and credited to a national guard operating fund. ~~All such income, collections, and reimbursements are hereby appropriated for the maintenance and operation of the national guard and must be expended in the manner and for the purposes provided by law.~~ The state treasurer, upon order of the director of the office of management and budget, shall make semiannual transfers from the general fund appropriation for the maintenance of the national guard to the national guard operating fund.

SECTION 5. AMENDMENT. Section 54-38-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-38-09. Reimbursement for treatment - Rates - Disposition of revenue and aid - Expenditures - Appropriation. The department, insofar as may be possible, shall seek to be reimbursed by the patient or persons liable for the support of the patient for any or all items of expense incurred by the department in connection with the care, custody, treatment, and rehabilitation and may make such financial arrangements concerning necessary expenses as it deems best. No patient ~~shall may~~ be charged at a rate greater than actual cost of the care, treatment, or rehabilitation furnished ~~such the~~ patient. The department may accept funds, property, or services from any source, and all revenue received from gifts and grants-in-aid ~~is hereby appropriated and shall must~~ be used in carrying out the provisions of this chapter deposited in the state treasury and may be spent only pursuant to an appropriation first made by the legislative assembly.

SECTION 6. AMENDMENT. Section 54-44-04.4 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44-04.4. Payment of unemployment compensation claims. The office of management and budget ~~from the appropriations made in section 54-44-04.3~~ shall quarterly reimburse ~~the~~ job service North Dakota for the amount of actual claims paid by ~~the~~ job service North Dakota to eligible recipients previously employed by state departments and institutions. ~~It shall be the responsibility of each~~ Each department and institution to shall verify and certify the validity of each unemployment claim prior to the reimbursement of funds to ~~the~~ job service North Dakota.

SECTION 7. REPEAL. Sections 6-07-46 and 54-44-04.3 of the North Dakota Century Code are hereby repealed.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 117

HOUSE BILL NO. 1211
(Committee on Agriculture)
(At the request of the Bank of North Dakota)

FARMERS OPERATING LOAN PROGRAM

AN ACT to amend and reenact sections 6-09.9-02, 6-09.9-03, and 6-09.9-04 of the North Dakota Century Code, relating to operating loans to farmers and agribusinesses; and to repeal section 6-09.9-06 of the North Dakota Century Code, relating to participation interests in operating loans to agribusinesses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.9-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.9-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Agribusiness" means a locally owned business operation, located within this state, which is primarily engaged in providing services, materials, or equipment for the production, processing, or transportation of agriculture products.
2. "Farmer" means a resident of this state who owns or operates an existing farm or ranch operation, and has a debt-to-asset ratio of fifty percent or greater. The industrial commission may adopt additional eligibility criteria in determining who is a farmer eligible for loans under this chapter.
3. 2. "Operating loan" means a loan or extension of credit with a term of one year or less made by a nongovernmental financial institution to a farmer or agribusiness for the operation of an existing farm or ranch operation or agribusiness. An operating loan includes a farmer's farmers home administration or small business administration subordinated operating loan and guaranteed operating loan, and may be further defined by rule of the industrial commission.

SECTION 2. AMENDMENT. Section 6-09.9-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.9-03. Operating loans - Participation by the Bank of North Dakota.

1. The Bank of North Dakota shall make available an appropriate amount of funds to purchase participation interests in operating loans to farmers and agribusinesses. Interest charged on a participation interest purchased by the Bank under this section may not exceed

eight percent per annum; plus one percent less than the Bank's base rate, as it may be established from time to time. The Bank may charge necessary and reasonable fees as determined by the industrial commission.

2. The amount of a participation interest purchased by the Bank under this section may not be greater than sixty-five percent of the loan amount or two hundred thousand dollars, whichever is less. The term of any participation interest purchased under this section may not exceed one year.
3. The Bank may not purchase a participation interest in a loan under this section until verification is received establishing that the farmer has obtained adequate crop or hail insurance which has been assigned to the primary lender; or that adequate insurance, as determined by the Bank, has been obtained by the agribusiness and the originating financial institution shall determine whether a borrower must obtain insurance on property pledged as security for a loan under this chapter.

SECTION 3. AMENDMENT. Section 6-09.9-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.9-04. Participation loans by private financial institutions.

1. The industrial commission may adopt rules relating to the maximum rate of interest charged on the portion of the operating loan retained by a participating financial institution.
2. All participation interests purchased are subject to the review and approval of the Bank.
3. The full amount of a loan qualifying for participation must be evidenced by one master note drawn by the financial institution to reflect both interest rates and to provide a schedule of payments to the financial institution and the Bank of North Dakota based upon pro rata shares of the loan participation.

* SECTION 4. REPEAL. Section 6-09.9-06 of the North Dakota Century Code is hereby repealed.

Approved April 3, 1989
Filed April 3, 1989

* NOTE: Section 6-09.9-06 was also repealed by section 11 of Senate Bill No. 2252, chapter 110.

CHAPTER 118

HOUSE BILL NO. 1146
(Committee on State and Federal Government)
(At the request of the Bank of North Dakota)

BANK OF NORTH DAKOTA INTEREST SUBSIDY FUND

AN ACT to amend and reenact section 6-09.10-06 of the North Dakota Century Code, relating to the interest subsidy revolving loan fund maintained at the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.10-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.10-06. Fund - Appropriation.

1. A revolving fund must be maintained at the Bank of North Dakota for the subsidy of interest rates on home-quarter purchases, as provided in this chapter. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund are hereby appropriated for the purpose of providing subsidies in accordance with this chapter.
2. The board may petition the emergency commission for a transfer from the state contingency fund whenever it appears to the board that the moneys remaining in the fund are not sufficient to meet demands on the fund. The emergency commission may grant the transfer request, or so much thereof as may be necessary, if it finds that an emergency situation exists in the industry of farming, due to increasing numbers of farm foreclosures.
3. The fund must be administered and supervised by the Bank of North Dakota. The Bank may deduct a service fee for administering the fund from payments received on the fund. The board and the Bank of North Dakota shall enter into an agreement through which the Bank shall supervise and monitor the payment and repayment of interest subsidies approved by the board.

Approved March 31, 1989

Filed March 31, 1989

CHAPTER 119

HOUSE BILL NO. 1181
(Committee on Agriculture)
(At the request of the Bank of North Dakota)

FINANCIAL ASSISTANCE FOR FAMILY FARMERS

AN ACT to amend and reenact sections 6-09.11-01, 6-09.11-03, 6-09.11-04, 6-09.11-06, 6-09.11-07, and 6-09.11-09 of the North Dakota Century Code, relating to financial assistance for family farmers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.11-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.11-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Economic farm unit" means a farm capable of producing income sufficient to support the operator of the farm and the farmer's family, if any, and to repay moneys borrowed under this chapter to establish the unit within the term of the loan.
- 2- "Family farm" means agricultural real estate operated and owned or leased by a farmer, or other organization authorized to own or lease land used for farming or ranching under chapter 10-06, where the majority of the labor necessary to operate the farm is performed by the farmer and the farmer's family, if any.
- 3- 2. "Farmer" means a resident of North Dakota involved in whose principal occupation is or will be the production of an agricultural commodity or livestock on a family farm or who will be involved in the production of an agricultural commodity on a family farm if granted a loan, and who meets the definition of "farmer" as provided in paragraph 2 of subdivision b of subsection 45 of section 57-02-08.

SECTION 2. AMENDMENT. Section 6-09.11-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.11-03. Loans - Participation by the Bank of North Dakota.

1. The Bank of North Dakota may make available an appropriate amount of funds to purchase participation interests in loans made by financial institutions for the purposes as set forth in section 6-09.11-04. Interest charged on a participation interest purchased by the Bank under this section may not exceed eight percent per annum, plus for the first five years of the loan. For the remaining time period of the loan, interest charged by the Bank may

not exceed one percent less than the Bank's base rate, as it may be established from time to time. For loans under this section, the Bank may not charge an interest rate exceeding eleven percent at any time during the course of the loan. The Bank may charge for necessary and reasonable fees as determined by the industrial commission.

2. The amount of a participation interest purchased by the Bank under this section may not be greater than the lesser of seventy-five thousand dollars or ninety percent of the loan amount.

* SECTION 3. AMENDMENT. Section 6-09.11-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.11-04. Loans to farmers - Purposes.

1. The following purposes are eligible to be funded by bond proceeds or loan participations under this chapter:
 - a. Purchasing ~~or leasing~~ agricultural real estate.
 - b. Constructing, repairing, altering, or adding to any farm buildings on agricultural real estate owned or purchased by the farmer.
 - c. Making permanent improvements to agricultural real estate owned or purchased by the farmer for the purpose of increasing the productive value of the land or promoting conservation of the soil.
 - d. Purchasing farm equipment.
 - e. Purchasing livestock.
 - f. Paying off and discharging mortgages, encumbrances, and other charges or liens against or on the agricultural real ~~estate~~ or personal property owned or purchased by the farmer.
 - g. Purchasing the farmer's home-quarter pursuant to chapter ~~6-10~~ 6-09.10.
 - h. Restructuring operating debt carryover.

SECTION 4. AMENDMENT. Section 6-09.11-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.11-06. Loan restrictions.

1. ~~Except for loans made to purchase the farmer's home-quarter, no loan may be made under this chapter unless the farm is an economic farm unit or it is reasonably expected that the farm unit will, as a result of the loan, constitute an economic farm unit.~~
2. ~~A loan to a farmer under this chapter may not exceed fifty thousand dollars. A farmer may borrow money under this chapter in a lump sum or in installments.~~

* NOTE: Section 6-09.11-04 was also amended by section 2 of Senate Bill No. 2056, chapter 69.

- 3- A loan under this chapter may not exceed ninety percent of the appraised value of the security given for the loan, with the actual percentage to be determined by the ~~industrial commission~~ Bank of North Dakota. The ~~industrial commission~~ Bank may do all things and acts, may require such security, and may establish additional terms and conditions as is determined necessary to ~~make~~ purchase a participation interest in a loan under this chapter.
- 4- 2. Except as otherwise provided:
- a. A loan under this chapter must be repayable in installments and may have a term up to twenty years.
 - b. All or part of a loan under this chapter may be repaid on any day on which an installment is due at any time, subject to conditions set forth in the mortgage.

SECTION 5. AMENDMENT. Section 6-09.11-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.11-07. Insurance requirements. Buildings on land given as security for a loan must, while any part of the loan remains unpaid, be insured against fire or casualty for their full insurable value, and the insurance policy must be assigned as collateral security. Livestock, crops on land, and other chattels given as security for a loan must be insured against risk. The Bank of North Dakota and the originating financial institution shall determine whether a borrower must obtain insurance on property pledged as security for a loan under this chapter.

SECTION 6. AMENDMENT. Section 6-09.11-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.11-09. Postponement of repayment of principal. If the income of a borrower is reduced in any year due to causes beyond the borrower's control to the extent that the borrower is unable to make a payment on a loan under this chapter, the ~~industrial commission~~ Bank of North Dakota and the originating lender may defer the payment of the principal sum due in that year and the term of the loan may be extended for the period of deferment.

SECTION 7. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 1989
Filed April 7, 1989

CHAPTER 120

SENATE BILL NO. 2286
(Senators Yockim, Waldera, Maixner)
(Representatives Gerhardt, Schmidt)

OIL AND GAS DEVELOPMENT LOANS

AN ACT to create and enact a new chapter to title 6 of the North Dakota Century Code, relating to oil and gas development loans by the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 6 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Developer" means a resident of this state or a corporation generating fifty percent or more of its income within this state.
2. "Oil and gas development" means oil and gas well reworking operations; oil and gas well recompletion operations; oil and gas enhanced recovery operations, including secondary and tertiary recovery operations; and purchase of producing oil and gas wells.
3. "Oil and gas development project" means a project financed under this chapter.

Bank of North Dakota may make loans for oil and gas development projects. The North Dakota industrial commission shall establish a program through the Bank of North Dakota for the purpose of participating in loans made by North Dakota financial institutions for oil and gas development projects undertaken by developers within the state. The Bank's total participation in any one loan may not exceed one hundred thousand dollars. The interest on a loan may not be greater than the Bank's base rate as in effect from time to time, and may float.

Approved April 12, 1989
Filed April 13, 1989

BUILDING AND LOAN ASSOCIATIONS

CHAPTER 121

SENATE BILL NO. 2297
(Olson)

BUILDING AND LOAN ASSOCIATION RECORDS

AN ACT to amend and reenact section 7-04-23 of the North Dakota Century Code, relating to retention of records by building and loan associations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 7-04-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7-04-23. Retention of records - Actions for unpaid balances. No association may be required to preserve its records of account or files for a longer period than six years next after the first day of January of the year following the date of such record or files, provided that such record or files have been reproduced on microfilm or other similar microphotographic record; which microfilm or other record must be maintained for not less than twenty years. Nothing herein may be construed to permit the destruction of ledger. Ledger sheets showing unpaid balances in favor of depositors or investors nor may not be destroyed unless a photostatic copy is retained under section 31-08-01.1, and this section be construed to does not limit the time when actions may be brought to recover such balances.

Approved March 22, 1989
Filed March 23, 1989

CORPORATIONS

CHAPTER 122

SENATE BILL NO. 2246
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

INVESTMENT ADVISORS

AN ACT to create and enact section 10-04-10.3 of the North Dakota Century Code, relating to postregistration requirements for registered dealers, salesmen, investment advisers, and investment adviser representatives; and to amend and reenact section 10-04-02, subsection 1 of section 10-04-03, sections 10-04-10, 10-04-10.1, 10-04-10.2, 10-04-11, and 10-04-12 of the North Dakota Century Code, relating to registration requirements for investment advisers and investment adviser representatives, and suspension or revocation of dealer's, salesman's, investment adviser's, and investment adviser representative's registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-04-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-02. Definitions. When used in this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the securities commissioner of this state.
2. "Dealer" means every person, other than a salesman, who engages in this state, either for all or part of his time:
 - a. Directly or indirectly, as agent, broker, or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person; or
 - b. Directly or through an officer, director, employee, or agent, which officer, director, employee, or agent is not registered as a dealer under this chapter, in selling securities issued by such person.
3. "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing

investment advisory services to others for compensation.
"Investment adviser" does not include:

- a. An investment adviser representative.
 - b. A bank, savings institution, or trust company.
 - ~~b.~~ c. A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession.
 - ~~c.~~ d. A broker or dealer or its salesman whose performance of these services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation for them.
 - ~~d.~~ e. A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation.
 - ~~e.~~ f. A person whose advice, analysis, or reports relate only to securities exempted by subsection † of section †0-04-05.
 - ~~f.~~ g. A person who has no place of business in this state if his only clients in this state are other investment advisers, brokers or dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees.
 - ~~g.~~ f. Such other persons not within the intent of this subsection as the commissioner may by rule or order designate.
4. "Investment adviser representative" means any partner, officer, director of an investment adviser, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:
- a. Makes any recommendations or otherwise renders advice regarding securities directly to advisory clients;
 - b. Manages the accounts or portfolios of clients;
 - c. Determines which recommendations or advice regarding securities should be given if that person is a member of the investment adviser's investment committee that determines general investment advice to be given to clients or, if the investment adviser has no investment committee, the person determines general client advice (if there are more than five such persons, only the supervisors of such persons are deemed to be investment adviser representatives);
 - d. Solicits, offers, or negotiates for the sale of or sells investment advisory services unless that person is a dealer licensed in this state or a licensed salesman of a dealer and

the person would not be an investment adviser representative except for the performance of the activities described in this subdivision; or

e. Immediately supervises employees in the performance of any of the foregoing.

5. "Issuer" means every person who issues or proposes to issue any security, except that:

a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, certificates of interest, or shares in an unincorporated investment trust, whether or not of the fixed, restricted management, or unit type, issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.

b. With respect to equipment trust certificates or like securities, issuer means the person by whom the equipment or property is or is to be used.

c. With respect to fractional interests in oil, gas, or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, which are created for the purpose of sale.

~~5-~~ 6. "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, shall be deemed an offer to sell the security to be acquired by subscription or conversion. The offer or grant of an option to purchase securities may not be deemed an offer to sell the securities to be purchased if:

a. The offer or grant is an offer or grant limited to directors, officers, or employees of the issuer or a parent or subsidiary of the issuer;

b. No money or other tangible property is given for the option; and

c. The option, by its terms or by the terms of a supplemental agreement, is nontransferable except by will or the laws of descent and distribution.

~~6-~~ 7. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any other unincorporated organization.

~~7-~~ 8. "Registered dealer" means a dealer registered under this chapter.

- ~~8-~~ 9. "Registered salesman" means a salesman registered under this chapter.
- ~~9-~~ 10. "Sale" or "sell" means every sale or other disposition of a security or interest in a security for value, and every contract to make any such sale or disposition. Any security given or delivered with, or as a bonus on account of any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.
- ~~10-~~ 11. "Salesman" means any individual, other than a dealer, who represents a dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. A partner, officer, or director of a dealer or an issuer or a person occupying a similar status or performing similar functions is a "salesman" only if he otherwise comes within the definition.
- ~~11-~~ 12. "Securities Act of 1933" means the Act of Congress known as the Securities Act of 1933, as now or hereafter amended.
- ~~12-~~ 13. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor where the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

SECTION 2. AMENDMENT. Subsection 1 of section 10-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The securities commissioner shall be appointed by the governor and confirmed by the senate and shall hold office for a term of four years, beginning on the first day of July following a national presidential election and continuing until a successor has been appointed, confirmed by the senate, and has qualified, unless removed as herein provided. If the senate is not in session, the governor may make an interim appointment, and the interim appointee shall hold office until the senate confirms or rejects the appointment. The commissioner shall be skilled in securities and shall not be an incumbent of any other public office in the state. The commissioner may not own or control any security required to be registered under this chapter and may not be an officer, director,

or employee of any dealer, salesman, ~~or~~ investment adviser, or investment adviser representative required to be registered under this chapter. The governor may remove from office any commissioner who fails to discharge faithfully the duties of office or who becomes disqualified under the provisions of this section.

It shall be the prime duty of the commissioner to administer the provisions of this chapter. The commissioner shall receive a salary within the amount appropriated for salaries by the legislative assembly. The commissioner shall use a seal with the words "securities commissioner, North Dakota" and such design as the commissioner may prescribe engraved thereon by which seal the commissioner may authenticate documents used in the administration of this chapter. The commissioner may employ such employees as are necessary for the administration of this chapter. In the absence or disability of the commissioner, the deputy shall administer the provisions of this chapter as acting commissioner.

* SECTION 3. AMENDMENT. Section 10-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-10. Registration of dealers, salesmen, and investment ~~counsel~~ advisers, and investment adviser representatives. No dealer or salesman shall offer for sale or sell any securities within or from this state, except in transactions exempt under section 10-04-06, unless he is registered as a dealer or salesman pursuant to the provisions of this section.

1. Dealers. Application for registration as a dealer may be made by any person eighteen years of age or older. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant, duly verified by oath, shall be filed in the office of the commissioner, and shall contain the following information:
 - a. The name of the applicant.
 - b. The address of the principal place of business of the applicant and the addresses of all branch offices, if any, of the applicant in this state.
 - c. The form of business organization and the date of organization of the applicant.
 - d. The names and business addresses of all members, partners, officers, directors, trustees, or managers of the applicant; a statement of the limitations, if any, of the liability of any partner, member, manager, or trustee; and a statement setting forth in chronological order the occupational activities of each such partner, member, officer, director, trustee, or manager during the preceding ten years.
 - e. A brief description of the general character of the business conducted or proposed to be conducted by the applicant.
 - f. A list of any other states in which the applicant is registered as a dealer, and, if registration of the applicant as a dealer

* NOTE: Section 10-04-10 was also amended by section 1 of Senate Bill No. 2209, chapter 125.

has ever been refused, canceled, suspended, or withdrawn in any state, full details with respect thereto.

- g. Whether the applicant is registered as a dealer under the Securities Exchange Act of 1934 or any act in amendment thereof and whether any such registration of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension by the securities and exchange commission.
- h. The names of all organizations of dealers or brokers of which the applicant is a member or before which any application for membership on the part of the applicant is then pending, and whether any such membership of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
- i. The names of any securities exchange of which the applicant or any of its partners, officers, directors, trustees, members, managers, or employees is a member, and whether any such membership has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
- j. A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant, or by a responsible officer or member of said applicant as the commissioner may require.
- k. Whether the applicant or any officer, director, partner, member, trustee, or manager of the applicant, has ever been convicted of a felony or any misdemeanor other than minor highway traffic offenses and, if so, all pertinent information with respect to any such conviction.
- l. Any other information which the commissioner may by rule or order require.

The commissioner may also require such additional information as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees as he may deem necessary to establish whether or not the applicant should be registered as a dealer under the provisions of this law.

There shall be filed with such application a written consent to the service of process upon the commissioner in actions against such dealer, conforming to the requirements of section 10-04-14, and payment of the prescribed registration fee, which shall be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection the commissioner may register such applicant as a dealer unless he shall find that the applicant is not of good business reputation, or is not solvent, or does not appear

qualified by training or experience to act as a dealer in securities.

The commissioner shall require an indemnity bond or a deposit of cash or other properties approved by the commissioner running to the state of North Dakota conditioned for the faithful compliance by the dealer, his agents, and his salesmen with all the provisions of this law and for the faithful performance and payment of all obligations of the dealer and his agents and salesmen.

The bond or deposit shall be of such type as may be approved by the commissioner and shall be in such amount as he shall deem necessary to protect purchasers when there is taken into consideration the volume of business engaged in by the applicant and the number of salesmen employed by the applicant. Any such bond shall have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a dealer he shall notify the applicant of such registration.

2. Salesmen. Application for registration as a salesman may be made by any individual eighteen years of age or older. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant and by the registered dealer or issuer employing or proposing to employ such applicant, duly verified by oath, shall be filed in the office of the commissioner and shall contain the following information:
 - a. Name and residence and business address of the applicant.
 - b. Name of the dealer or issuer employing or proposing to employ the applicant, unless the applicant is to be self-employed.
 - c. Names and addresses of three persons of whom the commissioner may inquire as to the character and business reputation of the applicant.
 - d. Applicant's age and education.
 - e. The nature of employment and names and addresses of employers of the applicant for the period of ten years immediately preceding the date of application.
 - f. Other state or federal laws under which the applicant has ever been registered as a dealer or salesman of securities, and, if any such registration has ever been refused, canceled, suspended, or revoked, full details with respect thereto.
 - g. Whether applicant has ever been convicted of a felony or misdemeanor other than minor highway traffic offenses, and if so, all pertinent information with respect to any such conviction.

The commissioner shall require as a condition of registration that the applicant, and, in the case of a corporation or partnership, all officers, directors, or partners doing securities business in this state, pass a written examination as evidence of

knowledge of the securities business; provided, that not more than two officers of an issuer may be registered as a salesman for a particular original offering of the issuer's securities without being required to pass such written examination; and provided, further, that no such officer may again register within five years as such salesman for this or any other issuer without passing the written examination.

The commissioner may also require such additional information as to the applicant's previous business experience as he may deem necessary to determine whether or not the applicant should be registered as a salesman under the provisions of this law. If a salesman proposes to be self-employed, he shall specifically state the particular security or securities he proposes to sell in this state in his application, and if said security or securities are exempt under section 10-04-05, or have been registered by description under section 10-04-07, or have been registered by announcement under section 10-04-07.1, or have been registered by qualification under section 10-04-08, then the commissioner shall require that said self-employed salesman file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed salesman with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond shall be in a form approved and in the amount required by the commissioner. There shall be filed with such application payment of the prescribed registration fee, which shall be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as a salesman unless he finds that such applicant is not of good business reputation, or that the dealer named on the application is not a registered dealer. When the commissioner has registered an applicant as a salesman, he shall immediately notify the applicant of such registration.

Every registered dealer or issuer shall promptly notify the commissioner of the termination of the employment by him of a registered salesman. The registration of such salesman shall automatically be suspended from the time of termination of such employment until such time as he shall notify the commissioner of his employment by another registered dealer or issuer.

3. Investment advisers.

a. It is unlawful for any person to transact business in this state as an investment adviser unless:

- (1) He is so registered under this chapter;
- (2) ~~He is registered as a dealer; provided, however, that the commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a dealer or salesman. When he finds that an applicant for initial or renewal registration as a dealer is not qualified as an investment adviser, he may by order~~

condition the applicant's registration as a dealer upon his not transacting business in this state as an investment adviser or

- ←3→ His only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies, other investment advisers, dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner.
- b. Application for registration as an investment adviser may be made by any person eighteen years of age or older. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant, duly verified by oath, shall be filed in the office of the commissioner, and shall contain the following information:
- (1) Name, residence, and business address of the applicant.
 - (2) If the applicant is a corporation or association, give full information as to agents, partners, and managing officers.
 - (3) Statement showing each individual named is of good repute and possesses essential experience and education.
 - (4) The plan and character of business, and the proposed method of operation.
 - (5) Such other information as may be required.
- c. If the applicant is a foreign corporation or association, it shall file with its application:
- (1) A copy of its articles.
 - (2) Certificate showing authorization to transact business.
- d. The commissioner may also require such additional information as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees, as he may deem necessary to establish whether or not the applicant should be registered as an investment adviser under the provisions of this chapter.
- e. There shall be filed with such application:
- (1) A written consent to the service of process upon the commissioner in actions against such investment adviser conforming to the requirements of section 10-04-14.

- (2) Payment of the prescribed registration fee, which shall be returned if registration is refused.
 - (3) A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant or by a responsible officer or member of said applicant, as the commissioner may require.
- f. The commissioner may require an indemnity bond or a deposit of cash or other properties approved by the commissioner running to the state of North Dakota conditioned for the faithful compliance by the investment adviser and his representatives with all the provisions of this law and for the faithful performance and payment of all obligations of the investment adviser and his representatives. The bond or deposit shall be of such type as may be approved by the commissioner and shall be in such amount as he shall deem necessary to protect persons in this state when there is taken into consideration the volume of business engaged in by the applicant and the number of persons who represent him. Any such bond shall have as surety thereon a surety company authorized to do business in this state.
 - g. The commissioner may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.
 - h. When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an investment adviser unless he shall find that the applicant is not of good business reputation or is not solvent.
 - i. A registrant as investment adviser shall notify the commissioner of any change of address.
4. Investment adviser representatives. Application for registration as an investment adviser representative may be made by any person eighteen years of age or older. The application for registration must be made in writing in a form prescribed by the commissioner, signed by the applicant and by the investment adviser employing or proposing to employ the applicant, duly verified by oath, filed in the office of the commissioner, and contain the following information:
- a. Name, residence, and business address of the applicant.
 - b. Name of the investment adviser employing or proposing to employ the applicant, unless the applicant is to be self-employed.
 - c. Applicant's age and education.

- d. The nature of employment and names and addresses of employers of the applicant for the period of ten years immediately preceding the date of the application.
- e. Other state or federal laws under which the applicant has ever been registered as an investment adviser representative, and, if any registration has ever been refused, canceled, suspended, or revoked, full details with respect thereto.
- f. Whether applicant has ever been convicted of a felony or misdemeanor other than minor highway traffic offenses, and if so, all pertinent information with respect to any such conviction.

There must be filed with the application payment of the prescribed registration fee, which must be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register the applicant as an investment adviser representative unless the commissioner finds that the applicant is not of good business reputation, or that the investment adviser named in the application is not a registered investment adviser. When the commissioner has registered an applicant as an investment adviser representative, the commissioner shall immediately notify the applicant of such registration.

Every registered investment adviser shall promptly notify the commissioner of the termination of the employment by the adviser of a registered investment adviser representative. The registration of the investment adviser representative is automatically suspended from the time of termination of employment until such time as the representative notifies the commissioner of employment by another investment adviser.

The commissioner may by rule provide for an examination to be taken by the applicant.

5. Refusal of registration. If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-04-12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, he shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order shall be mailed to the applicant at his business address, and if the application is for registration as a salesman, to the registered dealer or issuer who proposed to employ such applicant. If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a dealer's, salesman's, or investment adviser's, or investment adviser representative's registration under section 10-04-11, such act or omission may constitute a sufficient ground for a finding by the commissioner that such applicant is not of "good business reputation".

~~5- 6.~~ Record and renewal of registrations. The names and addresses of all persons who have been registered as dealers, salesmen, ~~or~~ investment advisers, ~~or investment adviser representatives~~, and all orders with respect thereto, shall be recorded in a register of dealers, salesmen, ~~and~~ investment advisers, ~~and investment adviser representatives~~ in the office of the commissioner. Every registration under this section shall expire one year from its effective date unless renewed. The commissioner may by rule provide for expirations and renewals, including dates, forms, and procedures, adjust registration fees to correspond with expiration dates, and do any other thing which may be necessary or convenient in order to participate in a central registration depository or any similar arrangement designed to promote uniformity, to ease regulatory burdens, or to encourage cooperation with other states, the securities and exchange commission, or any registered national securities association or exchange. Upon any change in the proprietors, partners, officers, or directors of a registered dealer or investment adviser, such registered dealer or investment adviser shall promptly notify the commissioner in writing of such changes. The commissioner shall record such changes, without fee, in the register of dealers, salesmen, ~~and investment advisers~~, ~~and investment adviser representatives~~.

~~6- 7.~~ Fees. The fee, which must accompany the application, for registration, ~~transfer~~, and for each annual renewal thereof is:

a. For each dealer	\$100-00	175.00
b. For each salesman		\$ 35.00
General examination		\$ 10.00
State law examination		\$ 5.00
Registration fee		\$ 20.00
Renewal fee		\$ 20.00
c. For each investment adviser		\$100.00
General examination		\$ 10.00
State law examination		\$ 5.00
Registration fee		\$ 50.00
d. For each investment adviser representative		\$ 35.00

An application to register as a dealer, salesman, ~~or~~ investment adviser, ~~or investment adviser representative~~ may, with the consent of the commissioner, be withdrawn upon written application, but in no event shall any registration fees be returned.

SECTION 4. AMENDMENT. Section 10-04-10.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-10.1. Advisory activities.

1. It is unlawful for any person who receives, directly or indirectly, any consideration from another person ~~primarily~~ for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
 - a. To employ any device, scheme, or artifice to defraud the other person; or

- b. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person; or
 - c. Acting as principal for the person's own account, knowingly to sell any security to or purchase any security from a client, or acting as broker for a person other than the client, knowingly to effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which the person is acting and obtaining the consent of the client to the transaction. The prohibitions of this subsection do not apply to any transaction with a customer of a dealer if the dealer is not acting as an investment adviser in relation to the transaction; or
 - d. To engage in dishonest or unethical practices as the commissioner may define by rule.
2. In the solicitation of advisory clients, it is unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
3. It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:
- a. That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.
 - b. That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract.
 - c. That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

Subdivision a does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in subdivision b, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a securityholder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

- 3- 4. It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:
- a. The commissioner by rule prohibits custody; or
 - b. In the absence of rule, the investment adviser fails to notify the commissioner that he has or may have custody.

SECTION 5. AMENDMENT. Section 10-04-10.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-10.2. Conviction not bar to registration - Exceptions. Conviction of an offense shall not disqualify a person from registration under this chapter unless the commissioner determines that the offense has a direct bearing upon a person's ability to serve the public as a dealer, salesman, ~~or~~ investment adviser, or investment adviser representative, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

* SECTION 6. Section 10-04-10.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-04-10.3. Postregistration provisions.

1. Every registered dealer, salesman, investment adviser, and investment adviser representative shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the commissioner prescribes by rule. All records so required must be preserved for three years unless the commissioner prescribes otherwise by rule for particular types of records.
2. Every registered dealer, salesman, investment adviser, and investment adviser representative shall file such financial reports as the commissioner prescribes by rule.
3. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.
4. All the records referred to in subsection 1 are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or outside this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, if deemed practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or any other jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business, and in so cooperating may share any information obtained as a result of any investigation or examination.

* NOTE: Section 10-04-10.3 was also created by section 1 of Senate Bill No. 2175, chapter 126.

5. The commissioner and the commissioner's representatives may copy records or require a registrant to copy records and provide the copies to the commissioner and the commissioner's representatives to the extent and in a manner reasonable under the circumstances.

* SECTION 7. AMENDMENT. Section 10-04-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-11. Suspension or revocation of dealer's, salesman's, and investment adviser's, and investment adviser representative's registration.

1. The commissioner may revoke the registration of any dealer, salesman, or investment adviser, or investment adviser representative if, after a hearing or opportunity for hearing as provided in section 10-04-12, he finds that such registered dealer, salesman, or investment adviser or investment adviser representative:
 - a. Has violated or failed to comply with, any provisions of this chapter or any order or rule of the commissioner under this chapter; or
 - b. Is, in the case of a dealer or investment adviser, insolvent; or
 - c. Has engaged in dishonest, fraudulent, or unethical practices in the securities business; or
 - d. Conducts business in purchasing or selling securities at such variations from current market prices as, in the light of all the circumstances, are unconscionable or unfair to the purchasing public, or if such variance, including commissions on sales, unreasonably exceeds the price quoted by a recognized national quotation list as prescribed by the commissioner; or
 - e. Has failed to file with the commissioner any financial statement record required pursuant to subsection 3 section 10-04-10.3, or has refused to permit an examination into his affairs as provided by subsection 3 section 10-04-10.3 and subsection 3 of this section; or
 - f. Has filed an application for registration which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or
 - g. Has been convicted of an offense determined by the commissioner to have a direct bearing upon a person's ability to serve the public as a dealer, salesman, or investment adviser, or investment adviser representative, or the commissioner finds that a person, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1; or
 - h. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any

* NOTE: Section 10-04-11 was also amended by sections 2 and 3 of Senate Bill No. 2175, chapter 126.

conduct or practice involving any aspect of the securities business; or

- i. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a dealer, salesman, or investment adviser, or investment adviser representative; or
 - j. Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a dealer, salesman, or investment adviser, or investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the securities and exchange commission suspending or expelling him from a national securities exchange or national securities association suspending or expelling membership in or association with a member of a self-regulatory organization registered under the Securities Exchange Act of 1934, the Commodity Exchange Act, or the Investment Advisors Act of 1940; or is the subject of a United States post-office fraud order; but the commissioner may not enter an order under this subsection on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order of revocation or suspension under this section; or
 - k. Has, in connection with the offer, sale, or purchase of any security, directly or indirectly, effected a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase or sale of the security; or
 - l. Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business; or
 - m. Has failed reasonably to supervise his salesmen if he is a dealer or his employees or his investment adviser representatives if he is an investment adviser.
2. It shall be sufficient cause for revocation of registration of a dealer or investment adviser as provided in this section, in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be sufficient ground for revoking the registration of an individual dealer or investment adviser.
 3. The commissioner may require any registered dealer, salesman, or investment adviser to make and keep such accounts, correspondence, memoranda, papers, books, and other records as he deems necessary to efficiently administer this chapter. Such records shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records. The commissioner may at any time require a registered dealer or investment adviser to file with him a financial statement showing the financial condition of such dealer or investment adviser as of

the most recent practicable date, and may require that such financial statement be verified by a certified public accountant; provided, however, that the commissioner shall not require any registered dealer or investment adviser to file such a financial statement more than twice in any one year. If the commissioner has reasonable grounds to believe that the registration of any registered dealer, salesman, or investment adviser, or investment adviser representative should be revoked upon any grounds specified in this section, the commissioner or his agent may conduct an examination into the affairs of any such registered dealer, salesman, or investment adviser or investment adviser representative. In making any such examination, the commissioner or his agent shall have access to and may compel the production of all the books and papers of a registered dealer, salesman, or investment adviser, or investment adviser representative, and may administer oaths to and examine the officers and employees of such dealer or investment adviser as to his business and affairs.

4. If the commissioner has reasonable grounds to believe that a registered dealer, salesman, or investment adviser, or investment adviser representative has been guilty of any act or omission which would be sufficient ground for revoking the registration of such dealer, salesman, or investment adviser, or investment adviser representative, he may enter an order suspending the registration of such dealer, salesman, or investment adviser, or investment adviser representative pending an examination into the affairs of such dealer, salesman, or investment adviser, or investment adviser representative or pending a hearing or opportunity for hearing as provided in section 10-04-12; provided, that no such order shall be effective for more than thirty days, and such order, if not withdrawn by the commissioner within thirty days, shall automatically terminate thirty days after the date of its issuance. Such suspension order shall state specifically the grounds for its issuance. Upon the entry of such suspension order, or of an order withdrawing a suspension order previously entered, the commissioner shall send a copy of such order by registered or certified mail to the dealer, salesman, or investment adviser, or investment adviser representative whose registration is affected thereby at his business address, and, if such order affects the registration of a salesman, to the registered dealer who employs such salesman to the registered dealer or registered investment adviser who employs any salesman or investment adviser representative affected by such order.
5. If the commissioner finds, after affording a registered dealer, a registered salesman, or a registered investment adviser, or a registered investment adviser representative a hearing or opportunity for hearing as provided in section 10-04-12, that there are grounds to revoke the registration of such dealer, salesman, or investment adviser, or investment adviser representative, he may enter an order in the register of dealers, salesmen, and investment advisers, and investment adviser representatives, revoking the registration of such dealer, salesman, or investment adviser, or investment adviser representative. Such order shall state specifically the grounds for its issuance. A copy of such order shall be sent by registered mail to the dealer, salesman, or investment adviser, or investment adviser representative whose

registration is revoked thereby at his business address and, if the revocation is of the registration of a salesman, or investment adviser representative, to the registered dealer or registered investment adviser who employs such ~~salesman~~ person. Suspension or revocation of the registration of a dealer shall also suspend or revoke the registration of all of his salesmen. Suspension or revocation of the registration of an investment adviser also suspends or revokes the registration of all of the investment adviser's investment adviser representatives. Suspension or revocation of the registration of a salesman or investment adviser representative solely because he was employed by a dealer or investment adviser whose registration was suspended or revoked shall not prejudice subsequent applications for registration by such ~~salesman~~ person.

SECTION 8. AMENDMENT. Section 10-04-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-12. Hearings. Before entering an order revoking the registration of any securities as provided in section 10-04-09, the commissioner shall send to the issuer of such securities, and if the application for registration of such securities was filed by a registered dealer, to such registered dealer, a notice of opportunity for hearing. Before entering an order refusing to register any person as a dealer, salesman, or investment adviser, or investment adviser representative, as provided in section 10-04-10, or revoking the registration of any person as a registered dealer, salesman, or investment adviser, or investment adviser representative as provided in section 10-04-11, the commissioner shall send to such person, and if such person is a salesman or investment adviser representative or an applicant for registration as a salesman or investment adviser representative, to the registered dealer or investment adviser who employs or proposes to employ such salesman or investment adviser representative, a notice of opportunity for hearing.

1. Notices of opportunity for hearing shall be sent by registered or certified mail, returned receipt requested, to the addressee's business address, and such notice shall state:
 - a. The order which the commissioner proposes to issue.
 - b. The grounds for issuing such proposed order.
 - c. That the person to whom such notice is sent will be afforded a hearing upon request to the commissioner if such request is made within ten days after receipt of the notice.
2. Whenever a person requests a hearing in accordance with the provisions of this section, the commissioner shall immediately set a date, time, and place for such hearing and shall forthwith notify the person requesting such hearing thereof. The date set for such hearing shall be within fifteen days, but not earlier than five days, after the request for hearing has been made, unless otherwise agreed to by both the commissioner and the person requesting such hearing.
3. For the purpose of conducting any hearing as provided in this section, the commissioner shall have the power to call any party to

testify under oath at such hearings, to require the attendance of witnesses, the production of books, records, and papers, and to take the depositions of witnesses; and for that purpose the commissioner is authorized, at the request of the person requesting such hearing or upon his own initiative, to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers, directed to the sheriff of the county where such witness resides or is found, which shall be served and returned. The fees and mileage of the sheriff and witnesses shall be paid from the fund in the state treasury for the use of the commissioner in the same manner that other expenses of the commissioner are paid.

4. At any hearing conducted under this section, a party or an affected person may appear in his own behalf or may be represented by an attorney. A stenographic record of the testimony and other evidence submitted shall be taken unless the commissioner and the person requesting such hearing shall agree that such a stenographic record of the testimony shall not be taken. The commissioner shall pass upon the admissibility of evidence, but a party may at any time make objections to the rulings of the commissioner thereon, and if the commissioner refuses to admit evidence the party offering the same shall make a proffer thereof and such proffer shall be made a part of the record of such hearing.
5. In any hearing under this section, the commissioner may conduct such hearing or he may appoint a referee who shall have the same powers and authority in conducting such hearings as are in this section granted to the commissioner. Such referee shall have been admitted to the practice of law in this state and be possessed of such additional qualifications as the commissioner may require. If a hearing is conducted by a referee such referee shall submit to the commissioner a written report setting forth his findings of fact and conclusions of law and a recommendation of the action to be taken by the commissioner. A copy of such written report and recommendations shall within five days of the time of filing thereof be served upon the person who requested the hearing, or his attorney or other representative of record, by registered or certified mail. That person or his attorney may, within ten days of receipt of the copy of such written report and recommendations, file with the commissioner written objections to the report and recommendations which shall be considered by the commissioner before entering an order. No recommendations of the referee shall be approved, modified, or disapproved by the commissioner until after ten days after service of such report and recommendations as herein provided. The recommendations of the referee may be approved, modified, or disapproved by the commissioner. The commissioner may order additional testimony to be taken or permit the introduction of further documentary evidence. A transcript of testimony and evidence, objections, if any, of the parties, and additional testimony and evidence, if any, shall have the same force and effect as if such hearing or hearings had been conducted by the commissioner. All recommendations of the referee to the commissioner shall be advisory only and shall not have the effect of an order of the commissioner.

6. If the commissioner does not receive a request for a hearing within the prescribed time, he may enter the proposed order. If a hearing is requested and conducted with respect to a proposed order, the commissioner shall issue a written order which shall set forth his findings with respect to the matters involved and enter an order in accordance with his findings.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 123

HOUSE BILL NO. 1192
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

SECURITIES OPINIONS, RULES, AND EXEMPTIONS

AN ACT to create and enact a new subsection to section 10-04-03 of the North Dakota Century Code, relating to fees for written opinions of the commissioner; and to amend and reenact subsection 2 of section 10-04-03, subsections 1 and 2 of section 10-04-05, and subsection 11 of section 10-04-06 of the North Dakota Century Code, relating to the authority of the securities commissioner, an exemption for governmental securities, registration exemptions for banks, and an exemption for employee stock purchase plans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 10-04-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

The commissioner may honor requests from interested persons for the issuance of a statement or opinion concerning the applicability of this chapter or the rules adopted under this chapter to any transaction or proposed transaction which may be subject to this chapter. Any such request must be accompanied by a fee to be set by the commissioner by rule, which may not exceed two hundred fifty dollars.

SECTION 2. AMENDMENT. Subsection 2 of section 10-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The commissioner shall have authority to administer oaths in, and to prescribe forms for, all matters arising under this chapter. The commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary under this chapter, including rules and forms governing registration statements, applications and reports, and defining any terms, whether or not used in this chapter, if the definitions are consistent with this chapter. The commissioner shall cooperate with the administrators of the securities laws of other states and of the United States with a view toward achieving maximum uniformity in the interpretation of like provisions of the laws administered by them and in the forms which are required to be filed under such law.

SECTION 3. AMENDMENT. Subsections 1 and 2 of section 10-04-05 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Securities issued or guaranteed by the United States of America, or by any state, territory, or insular possession thereof, or by any

political subdivision of any such state, territory, or insular possession, or by the District of Columbia, or by any public agency or instrumentality of one or more of any of the foregoing, or payable from assessments for improvements or revenues of publicly owned utilities therein; or a certificate of deposit for any of the foregoing, but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless the security is insured or unconditionally guaranteed by, or the revenues are derived from, a person whose securities are exempt from registration under this section.

2. Securities issued by and representing an interest in or a debt of, or guaranteed by, a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an act of Congress and supervised by the United States, or any agency thereof, or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member, or issued by and representing an interest in or a debt of, or guaranteed by, a state bank, trust company, savings bank, savings institution, or credit union incorporated under the laws of this state and subject to supervision by this state or by any agency thereof organized and supervised under the laws of any state, and securities of any person subject to examination by the commissioner of banking and financial institutions of North Dakota.

SECTION 4. AMENDMENT. Subsection 11 of section 10-04-06 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

11. Any investment contract security issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan; provided, that the securities which fund the plan or are the subject of the plan are otherwise exempt pursuant to section 10-04-05.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 124

SENATE BILL NO. 2043
(Legislative Council)
(Interim Jobs Development Commission)

SECURITIES TRANSACTIONAL EXEMPTIONS

AN ACT to amend and reenact subsection 9 of section 10-04-06 of the North Dakota Century Code, relating to the authority of the securities commissioner to adopt transactional exemptions from securities registration requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 10-04-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. a. Any transaction pursuant to an offer directed by the offeror to not more than twenty-five persons (other than those designated in subsection 5) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:
- (1) The seller reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.
 - (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5).
 - (3) The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee of one hundred dollars, which fee must accompany the application for approval.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in paragraphs 1, 2, and 3 with or without the substitution of a limitation on remuneration.

- b. Any sales by an issuer to not more than twenty persons other than those designated in subsection 5 offer or sale in this state of common stock or limited partnership interests of an issuer during any period of twelve consecutive months; whether

or not any of the buyers is then present in this state, if all of the following conditions are met:

- (1) The issuer reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.
- (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5), except reasonable and customary commissions paid by the issuer to a dealer or salesman registered under this chapter or others who the commissioner may designate by rule.
- (3) The issuer is both organized under the laws of this state and has its principal place of business in this state.
- (4) No public advertising matter or general solicitation is used in connection with any offers or sales.
- (5) The issuer has, ten days prior to any sale pursuant to this subdivision, supplied the commissioner with a statement on forms prescribed by the commissioner containing the following information:
 - (a) The name and address of the issuer and the date and state of its organization.
 - (b) The number of units, price per unit, and description of the securities to be sold.
 - (c) The amount of commissions to be paid and the persons to whom they will be paid.
 - (d) The names of all officers, directors, and persons owning five percent or more of the equity of the issuer.
 - (e) A brief description of the intended use of the proceeds.
 - (f) A description of all sales of securities made by the issuer in this state preceding the date of filing.
 - (g) A copy of the investment letter, if any, intended to be used in connection with any sale.

At least eighty percent of the net proceeds from the sale of the securities must be used in connection with the operations of the issuer in this state. "Net proceeds" means gross proceeds less commissions and sales expenses.

- (6) An offering disclosure document in the form approved by the commissioner must be delivered to each offeree no less than seventy-two hours prior to the sale of the security.

- (7) The gross proceeds of the offering may not exceed five hundred thousand dollars.
- (8) The issuer must apply for and obtain the written approval of the commissioner prior to making any offer or sale in this state by filing an application prescribed by the commissioner, a copy of the offering disclosure document, and any other information or documents the commissioner may require, together with a filing fee of one hundred dollars.
- (9) All funds raised in the offering are placed in an escrow account until the total offering has been sold.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, ~~or increase or decrease the number of buyers permitted,~~ or waive the conditions in paragraphs ~~1, 2, and 3~~ with or without the ~~substitution of a limitation on remuneration~~ 6 and 7.

- c. The offer or sale of a security offered or sold in compliance with a limited offering transactional exemption that the commissioner, by rule, may adopt to further the objectives of compatibility with the exemptions from securities registration authorized by the Securities Act of 1933 and uniformity among the states.
- d. The exemptions provided under subdivisions a and, b, and c may not be combined.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 125

SENATE BILL NO. 2209
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

SECURITIES DEALERS AND PRE-NEED FUNERAL FEES

AN ACT to amend and reenact subsection 6 of section 10-04-10 and section 43-10.1-03 of the North Dakota Century Code, relating to registration fees for securities dealers and salesmen and filing fees for pre-need funeral services annual reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 6 of section 10-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Fees. The fee, which must accompany the application, for registration, transfer, and for each annual renewal thereof is:

a. For each dealer	\$100.00 \$175.00
b. For each salesman	\$ 35.00
General examination	\$ 10.00
State law examination	\$ 5.00
Registration fee	\$ 20.00
Renewal fee	\$ 20.00
c. For each investment adviser	\$100.00
General examination	\$ 10.00
State law examination	\$ 5.00
Registration fee	\$ 50.00
d. For each investment adviser representative	\$ 35.00

An application to register as a dealer, salesman, or investment adviser, or investment adviser representative may, with the consent of the commissioner, be withdrawn upon written application, but in no event shall any registration fees be returned.

** SECTION 2. AMENDMENT. Section 43-10.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10.1-03. Annual report filed with securities commissioner. On or before January thirty-first of each year, the owner or manager of each cemetery association or licensed funeral establishment that has entered into any pre-need funeral service contracts shall file a report covering the period of the preceding calendar year with the securities commissioner, which report shall include:

* NOTE: Section 10-04-10 was also amended by section 3 of Senate Bill No. 2246, chapter 122.

** NOTE: Section 43-10.1-03 was also amended by section 2 of House Bill No. 1163, chapter 306.

1. The name and address of the licensed funeral establishment or cemetery association and the name and address of the manager or operator thereof.
2. The name of the purchaser and beneficiary of each pre-need funeral service contract entered into on behalf of the licensed funeral establishment or cemetery association during the preceding calendar year and the date each contract was made.
3. The lump-sum consideration paid upon such pre-need funeral service contract required to be reported under subsection 2 or the total amount in dollars of any installments paid upon each pre-need funeral service contract required to be reported under subsection 2.
4. The name and address of the bank or trust company in which such consideration was deposited in accordance with section 23-06-03.1.
5. The total in dollars of all sums received as consideration upon pre-need funeral service contracts executed by the licensed funeral establishment or cemetery association or in its behalf during all periods after July 1, 1973, which are undrawn or unexpended and on deposit in a bank or trust company or in the hands of the licensed funeral establishment or cemetery association.
6. Such other information as may reasonably be required by the securities commissioner for the purpose of the proper administration of this chapter.

Such report shall be accompanied by a filing fee of ~~five~~ fifteen dollars and shall be a public record.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 126

SENATE BILL NO. 2175
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

INVESTMENT BUSINESS RECORDS AND REPORTS

AN ACT to create and enact section 10-04-10.3 of the North Dakota Century Code, relating to post-registration requirements for registered dealers, salesmen, investment advisers, and investment adviser representatives; and to amend and reenact subdivision e of subsection 1 and subsection 3 of section 10-04-11 of the North Dakota Century Code, relating to suspension or revocation of dealer's, salesman's, investment adviser's, and investment adviser representative's registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. Section 10-04-10.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-04-10.3. Post-registration provisions.

1. Every registered dealer, salesman, investment adviser, and investment adviser representative shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the commissioner prescribes by rule. All records required must be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records.
2. Every registered dealer, salesman, investment adviser, and investment adviser representative shall file such financial reports as the commissioner prescribes by rule.
3. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.
4. All the records referred to in subsection 1 are subject at any time to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or outside this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as deemed practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, any national securities exchange, or national securities association registered under the Securities Exchange Act of 1934, or any other jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business. In cooperating

* NOTE: Section 10-04-10.3 was also created by section 6 of Senate Bill No. 2246, chapter 122.

with any entity under this subsection, the commissioner may share any information the commissioner or the commissioner's representatives may obtain as a result of any investigation or examination.

5. The commissioner and the commissioner's representatives may copy records or require a registrant to copy records and provide the copies to the commissioner and the commissioner's representatives to the extent and in a manner reasonable under the circumstances.

* SECTION 2. AMENDMENT. Subdivision e of subsection 1 of section 10-04-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- e. Has failed to file with the commissioner any financial statement record required pursuant to subsection 3 section 10-04-10.3, or has refused to permit an examination into his affairs as provided by section 10-04-10.3 and subsection 3 of this section; or

* SECTION 3. AMENDMENT. Subsection 3 of section 10-04-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The commissioner may require any registered dealer, salesman, or investment adviser to make and keep such accounts, correspondence, memoranda, papers, books, and other records as he deems necessary to efficiently administer this chapter. Such records shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records. The commissioner may at any time require a registered dealer or investment adviser to file with him a financial statement showing the financial condition of such dealer or investment adviser as of the most recent practicable date, and may require that such financial statement be verified by a certified public accountant, provided, however, that the commissioner shall not require any registered dealer or investment adviser to file such a financial statement more than twice in any one year. If the commissioner has reasonable grounds to believe that the registration of any registered dealer, salesman, or investment adviser, or investment adviser representative should be revoked upon any grounds specified in this section, the commissioner or his agent may conduct an examination into the affairs of any such registered dealer, salesman, or investment adviser, or investment adviser representative. In making any such examination, the commissioner or his agent shall have access to and may compel the production of all the books and papers of a registered dealer, salesman, or investment adviser, or investment adviser representative, and may administer oaths to and examine the officers and employees of such dealer or investment adviser as to his business and affairs.

Approved March 31, 1989

Filed March 31, 1989

* NOTE: Section 10-04-11 was also amended by section 7 of Senate Bill No. 2246, chapter 122.

CHAPTER 127

SENATE BILL NO. 2223
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

SECURITIES LAWS ENFORCEMENT

AN ACT to amend and reenact subsections 1 and 2 of section 10-04-16 and subsection 1 of section 10-04-16.1 of the North Dakota Century Code, relating to injunctions for violations and to investigations under the securities laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 10-04-16 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Issue any order including, but not limited to, cease and desist, stop, and suspension orders, which ~~he~~ the commissioner deems necessary or appropriate in the public interest or for the protection of investors; ~~provided, however, that.~~ The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty against any person found in an administrative action to have violated any provision of this chapter, or any regulation, rule, or order adopted or issued under this chapter, in an amount not to exceed ten thousand dollars for each violation. The attorney general, upon the commissioner's request, may bring actions to recover penalties pursuant to this section in district court. However, any person aggrieved by an order issued pursuant to this subsection may request a hearing before the commissioner if such request is made within ten days after receipt of the order. The provisions of subsections 2, 3, 4, and 5 of section 10-04-12 shall apply to any hearing conducted hereunder. If, after a hearing, the commissioner shall sustain an order previously issued, the sustaining order shall be subject to appeal to the district court of Burleigh County by serving on the commissioner within twenty days after the date of entry of the sustaining order a written notice of appeal signed by the appellant stating:
 - a. The order of the commissioner from which the appeal is taken.
 - b. The grounds upon which a reversal or modification of such order is sought.
 - c. A demand for a certified transcript of the record of such order.

The provisions of subdivisions a and b of subsection 3 of section 10-04-13 shall apply to an appeal hereunder.

2. Apply to the district court of any county in this state for an injunction restraining such person and his agents, employees, partners, officers, and directors from continuing such act, practice, or transaction or engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts may warrant. In any proceeding for an injunction, the commissioner may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendant and his agents, employees, partners, officers, or directors, and the production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant, and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

SECTION 2. AMENDMENT. Subsection 1 of section 10-04-16.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The commissioner in his discretion:
 - a. May make such public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. In the discretion of the commissioner, the expense reasonably attributed to an investigation under this section must be paid by the dealer, salesman, investment adviser, or investment adviser representative whose affairs are investigated, but the expense so payable may not exceed an amount that the commissioner prescribes by rule.
 - b. May require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated.
 - c. May publish information concerning any violation of this chapter or any rule or order hereunder, and may keep confidential the information or documents obtained or prepared in the course of any investigation conducted under this section but only during an active and ongoing investigation. If an investigation under this section extends beyond six months, the commissioner must, upon a request by any party, state in writing that the need for confidentiality still exists, the general reason why the need exists, and the date, as can best be determined at the time, when the need for confidentiality will cease.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 128

HOUSE BILL NO. 1440
(Representatives A. Olson, Myrdal, Shaft)
(Senators Maxson, Vosper)

FARM CORPORATION CONVERSION

AN ACT to amend and reenact section 10-06-01 of the North Dakota Century Code, relating to conversion of a farm corporation to a business corporation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-06-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-01. Farming or ranching by corporations prohibited - Retention of mineral interests prohibited - Conversion of corporation. All corporations, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching. A corporation may be a partner in a partnership that is in the business of farming or ranching only if that corporation complies with this chapter. For land and minerals acquired after July 1, 1985, any corporation which acquires mineral interests through foreclosure or in lieu of foreclosure which were not specifically valued at the time the security interest in the minerals was acquired, and that is prohibited from owning or leasing land used in farming or ranching, is prohibited from retaining mineral interests in land used for farming or ranching when the corporation divests itself of the land, and the mineral interests must be passed with the surface estate of the land when the corporation divests itself of the land pursuant to this chapter. As used in this chapter, "corporation" includes any joint stock company or association.

A business corporation organized under chapter 10-19.1 may convert to a farm corporation by adopting an amendment to its articles of incorporation. The amendment must specify that the corporation elects to be subject to this chapter, and the corporation does comply with all requirements of this chapter. The amendment must be filed with the prescribed fee and with the initial report required by section 10-06-07.3. A farm corporation may convert to a business corporation by adopting an amendment to its articles of incorporation. The amendment must be filed with the prescribed fee.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 129

SENATE BILL NO. 2161
(Committee on Agriculture)
(At the request of the Secretary of State)

FARM CORPORATION AGENT ADDRESS

AN ACT to amend and reenact subsection 2 of section 10-06-08 of the North Dakota Century Code, relating to the address and agent of a North Dakota farm corporation as reported on the annual report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 10-06-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The address of the registered office of the corporation in this state and the name ~~and address~~ of its registered agent in this state at that address.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 130

HOUSE BILL NO. 1135
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

CORPORATE CERTIFICATE OF EXISTENCE

AN ACT to amend and reenact section 10-22-06 of the North Dakota Century Code, relating to filing of an application of a corporation for a certificate of authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-22-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-06. Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority must be delivered to the secretary of state, together with a certificate of good standing or a certificate of existence duly authenticated by the ~~proper~~ incorporating officer of the state or country where the corporation is incorporated and the consent of the designated registered agent for service of process to serve in that capacity.

The secretary of state shall, upon determining that the application conforms to law and that all fees have been paid as prescribed in chapter 10-23:

1. Endorse on each document the word "filed" and the month, day, and year of the filing.
2. File one of the duplicate originals of the application, the certificate of good standing or certificate of existence, and the consent of the registered agent.
3. Issue to the corporation or its representative a certificate of authority to transact business in this state with the other duplicate original application affixed.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 131

HOUSE BILL NO. 1577
(Hoffner, D. Larson)

CORPORATION ANNUAL REPORTS SIGNATURES

AN ACT to amend and reenact section 10-23-01 of the North Dakota Century Code, relating to annual reports of domestic and foreign corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-23-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-01. Annual report of domestic and foreign corporations. Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall file, within the time prescribed by sections 10-23-02 and 10-23-03, an annual report setting forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
2. The address of the registered office of the corporation in this state, and the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.
3. A brief statement of the character of the business in which the corporation is actually engaged in this state.
4. The names and respective addresses of the directors and officers of the corporation.
5. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
6. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
7. A statement, expressed in dollars, of the amount of stated capital of the corporation. "Stated capital" means, at any particular time, the sum of the following:
 - a. The par value of all shares of the corporation having a par value, which have been issued.
 - b. The amount of the consideration received by the corporation for all shares of the corporation without par value, which have

been issued, except such part of the consideration thereof as may have been allocated to capital surplus in a manner permitted by law.

- c. Such amounts not included in subdivisions a and b as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation must be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees and other charges imposed by chapters 10-19.1 through 10-23.
8. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the twelve months ending on the thirty-first day of December preceding the date herein provided for the filing of the annual report and the gross amount thereof transacted by the corporation at or from places of business in this state. If, on the thirty-first day of December preceding the time herein provided for the filing of such report, the corporation had not been in existence for a period of twelve months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve months, the statement with respect to business transacted shall be furnished for the period between the date of incorporation or the date of its authorization to transact business in this state, as the case may be, and such thirty-first day of December.
9. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess the proper amount of fees payable by such corporation.

Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report, except as to the information required by subsections 7, 8, and 9 which shall be given as of the close of business on the thirty-first day of December next preceding the date herein provided for the filing of such report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. It shall be ~~executed by the corporation by its president, a vice president, secretary, an assistant secretary, or treasurer~~ signed as prescribed in subsection 28 of section 10-19.1-01 or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation. The secretary of state may destroy all the annual reports provided for in this section after they have been on file for six years.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 132

HOUSE BILL NO. 1558

(P. DeMers, Wilkie, Clayburgh, Dalrymple, Gates)

NONPROFIT DEVELOPMENT CORPORATION CREDITS

AN ACT to create and enact three new sections to chapter 10-24 and a new section to chapter 57-38 of the North Dakota Century Code, relating to certification of nonprofit development corporations and providing income tax credits for purchase of memberships, payment of dues, or making contributions by individuals and corporations to certified nonprofit development corporations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in sections 1 through 3 of this Act, unless the context otherwise requires:

1. "Certified nonprofit development corporation" means a corporation organized under this chapter, certified by the secretary of state under section 2 of this Act, and no part of the income of which is distributable to its members, directors, or officers.
2. "Primary sector business" means an individual, corporation, partnership, or association that, through a process employing knowledge and labor, adds value to a product produced for resale.

SECTION 2. A new section to chapter 10-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

Certification of nonprofit development corporations. The secretary of state, after consultation with the economic development commission, shall adopt rules establishing minimum requirements for certification of nonprofit development corporations. The rules must contain a requirement that at least a majority of funds of the corporation must be used for investment in primary sector business. A nonprofit development corporation may obtain certification from the secretary of state upon compliance with this section, the rules adopted by the secretary of state, and payment of a fee of ten dollars.

SECTION 3. A new section to chapter 10-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

Certified nonprofit development corporations - Income tax credit for memberships or dues. An individual or corporate income taxpayer that buys membership in, or pays dues or contributes to, a nonprofit development corporation certified by the secretary of state under section 2 of this Act is entitled to a credit against income tax liability under chapter 57-38 in

an amount equal to twenty-five percent of the total amount invested. No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section. The amount of the credit under this section in excess of the taxpayer's income tax liability may be carried forward for up to seven taxable years.

SECTION 4. A new section to chapter 57-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

Credit for investments in development corporations. An individual, estate, trust, or corporation is allowed, as a credit against a tax otherwise due under section 57-38-29 or 57-38-30 the credit for buying membership in, or paying dues or contributions to, a certified nonprofit development corporation as provided in section 3 of this Act.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 18, 1989
Filed April 18, 1989

CHAPTER 133

SENATE BILL NO. 2199
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

CORPORATE CERTIFICATE APPLICATIONS

AN ACT to amend and reenact section 10-27-06 of the North Dakota Century Code, relating to filing of application for a certificate of authority by a corporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-27-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-27-06. Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a certificate of good standing or a certificate of existence, duly authenticated by the ~~proper~~ incorporating officer of the state or country under the laws of which it is incorporated.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as provided in chapters 10-24 through 10-28:

1. Endorse on each of such documents the word "filed" and the month, day, and year of the filing thereof.
2. File in his office one of such duplicate originals of the application and the good standing certificate or certificate of existence.
3. Issue a certificate of authority to conduct affairs in this state to which he shall affix the other duplicate original application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 134

HOUSE BILL NO. 1049
(Legislative Council)
(Interim Jobs Development Commission)

VENTURE CAPITAL CORPORATIONS

AN ACT to create and enact a new subsection to section 10-30.1-04, two new sections to chapter 10-30.2, a new subsection to section 57-01-02, and two new subdivisions to subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to investments made by venture capital corporations and procedures for claiming the income tax credit for investment in the Myron G. Nelson Fund, Incorporated, and venture capital corporations, the authority of the tax commissioner and attorney general to waive tax due, and tax exemptions for pension benefits; to amend and reenact section 10-30.1-01, subsection 4 of section 10-30.1-04, subsection 1 of section 10-30.1-05, sections 10-30.1-06, 10-30.1-07, 10-30.1-08, 10-30.1-09, 10-30.2-06, 10-30.2-11, 10-30.2-12, 10-30.2-13, 10-30.2-14, and subdivisions j and l of subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to investments made by venture capital corporations and tax credits for investment in the Myron G. Nelson Fund, Incorporated, and venture capital corporations, board of director liability and investment policy of the Myron G. Nelson Fund, Incorporated, and tax exemptions for pension benefits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-30.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-01. Definitions. As used in this chapter, unless the context otherwise requires, the term:

1. "Qualified entity" means a business that:

- a. Is a small business concern as defined under Public Law No. 85-536, § 2[3], 72 Stat. 384; 15 U.S.C. 632, as amended, ~~and~~.
- b. Is a business which through a process employing knowledge and labor adds value to a product for resale.
- c. Has its principal office in this state and is primarily doing business within this state.

However, after the effective date of this Act, a "qualified entity" does not include any business or an affiliate of a business that owns tax-exempt securities. In addition, any venture capital corporation organized before January 1, 1989, may invest not more than five hundred thousand dollars in an entity or an affiliate of an entity that owns tax-exempt securities.

2. "Taxpayer" includes any individual, corporation, or fiduciary subject to a tax or a duty to file a tax return imposed by chapter 57-38.
3. "Venture capital corporation" means a corporation ~~which~~ that is organized for the specific purposes and under the specific conditions provided for in this chapter.

SECTION 2. A new subsection to section 10-30.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

If a venture capital corporation does not invest or provide financing with eighty percent of the funds received from investors within two years of receiving the funds, the venture capital corporation must be dissolved and all funds held by the corporation must be returned to the investors in proportion to their investments.

SECTION 3. AMENDMENT. Subsection 4 of section 10-30.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A venture capital corporation will provide financing to qualified entities to be used solely for the purpose of enhancing the production capacity of the qualified entity or the ability of the qualified entity to do business in this state. The venture capital corporation may establish and regulate terms and conditions, consistent with this chapter, with respect to the financing. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing, but no more than twenty percent of the stated capital of a venture capital corporation may be invested in any one qualified entity. For purposes of this chapter, "one qualified entity" means a single entity or a group of affiliated entities that are engaged in a unitary business.

SECTION 4. AMENDMENT. Subsection 1 of section 10-30.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Subject to sections 10-30.1-06, 10-30.1-07, and 10-30.1-08, a taxpayer is entitled to a credit against any state income tax liability which may be imposed on the taxpayer for a particular taxable year that begins after December 31, 1984, if the taxpayer makes an investment in a venture capital corporation. However, a taxpayer that makes an investment in a venture capital corporation on or after the effective date of this Act is only entitled to a tax credit if the venture capital corporation uses the funds it receives from the taxpayer to invest or provide financing to qualified entities, which entities do not include a business or an affiliate of a business that owns tax-exempt securities. Investments by Myron G. Nelson Fund, Incorporated, in a venture capital corporation do not qualify for the tax credit provided by this chapter. Tax credits under this chapter are not subject to payment of interest as provided in section 57-38-35.1.

SECTION 5. AMENDMENT. Section 10-30.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-06. Amount of tax credit. Subject to sections 10-30.1-07 and 10-30.1-08, the maximum amount of tax credit a taxpayer may receive is equal to twenty-five percent of the taxpayer's investment in any venture capital corporations, up to a total tax credit of two hundred fifty thousand dollars under this chapter. However, a taxpayer is not entitled to a tax credit if the taxpayer has purchased stock from and sold stock back to the venture capital corporation in a manner that indicates that the sole purpose of the taxpayer's activities was to avoid paying state income tax by receiving additional tax credits.

SECTION 6. AMENDMENT. Section 10-30.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-07. Taxable year for credit.

1. The tax credit must be credited against the taxpayer's income tax liability for the taxable year in which full consideration for the investment in the venture capital corporation is received by the venture capital corporation. If the amount of the tax credit exceeds the taxpayer's tax liability for that taxable year, the amount of the credit which exceeds the tax liability may be ~~carried back or~~ carried forward, to the extent not already used as a credit pursuant to this section, as a credit against the taxpayer's state income tax liability for ~~the three taxable years preceding and the seven taxable years following~~ the taxable year in which full consideration for the investment is received.
2. A taxpayer is eligible for a tax credit under this chapter on the date the venture capital corporation receives full consideration for the investment purchased by the taxpayer in the venture capital corporation. In the event the venture capital corporation must return the taxpayer's investment pursuant to subsection 8 of section 10-30.1-04 or section 2 of this Act, any tax credit taken by a taxpayer for the investment under this chapter plus penalty and interest as provided in section 57-38-45 must be paid to the state tax commissioner; however, the taxpayer is entitled to retain a percentage of the tax credit equal to the percentage of the taxpayer's investment not returned by the venture capital corporation, up to a maximum percentage of ten percent.

SECTION 7. AMENDMENT. Section 10-30.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-08. Tax credit limits. The total amount of investments for which tax credits are allowed for all taxpayers under this chapter for the period beginning ~~on July 1, 1985, and ending December 31, 1986, is four million dollars, and for each two-year period thereafter is four million dollars plus up to one million dollars of any investments available for tax credits from the previous two-year period~~ January 1, 1989, and ending December 31, 1990, is one million dollars. If investments in venture capital corporations reported to the state tax commissioner pursuant to section 10-30.1-10 exceed the limits on investments for tax credit imposed by this section, the credit must be allowed to taxpayers in the chronological order

of their investments in the venture capital corporations as determined from the forms provided for in section 10-30.1-10.

SECTION 8. AMENDMENT. Section 10-30.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-09. Tax credit - Procedure. To receive the tax credit provided by this chapter, a taxpayer must claim the tax credit on the taxpayer's annual state income tax return in the manner prescribed by the state tax commissioner and file with the taxpayer's annual state tax return a copy of the form issued by the venture capital corporation as to the taxpayer's investment in the venture capital corporation pursuant to section 10-30.1-10. The tax credit provided for in this chapter, including ~~carrybacks and carryforwards~~, may not be claimed by taxpayers filing income tax returns pursuant to the provisions of section 57-38-30.3.

SECTION 9. AMENDMENT. Section 10-30.2-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.2-06. Professional investor to manage corporate funds - Investment policy. The board of directors shall contract with a professional investor, determined by the board of directors to be experienced in making successful venture capital investments, for the purpose of managing the corporation's investment fund. The management contract may provide that the professional investor take an active role in the management of any entity in which an equity interest is purchased. The board of directors shall annually review the investment performance of the professional investor. It shall be the policy of the corporation to invest primarily in North Dakota businesses. ~~The corporation's investment in any one entity may not exceed a maximum of forty percent of the entity's capital. This percentage limitation does not apply to co-venture investments made on behalf of the corporation in conjunction with one or more additional professional investors. The~~ However, the board of directors may prescribe in the management contract that a percentage of the corporation's investment fund be made available for investment outside the state.

SECTION 10. AMENDMENT. Section 10-30.2-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.2-11. Tax credits for investment in stock of corporation by banks, savings and loan associations, trust companies, and insurance companies. A bank, savings and loan association, trust company, or insurance company that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, is entitled, subject to section 10-30.2-13, to a credit in an amount equal to twenty-five percent of the total amount invested in the stock against the tax liability imposed against the taxpayer pursuant to sections 26.1-03-17, 57-35-02, 57-35.1-02, and 57-35.2-02, if applicable. ~~In any one taxable year, the amount of the credit allowed for deduction from the taxpayer's tax liability may not exceed twenty-five percent of the total amount of the credit, and in no case may the amount exceed twenty-five percent of the taxpayer's tax liability in that year. The amount of any remaining unused credit may be carried forward until the total amount of the credit is used. The tax credit allowed under this section must be credited against the~~

taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which ~~that portion of the credit allowed by this section to be claimed in any one taxable year exceeds twenty-five percent of the taxpayer's tax liability in that year~~ may be ~~carried back for not more than three taxable years or~~ carried forward ~~until the total amount of the credit is used for seven taxable years.~~

SECTION 11. AMENDMENT. Section 10-30.2-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.2-12. Income tax credits for investment in stock of corporation. A taxpayer that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, is entitled, subject to section 10-30.2-13, to a credit in the amount equal to twenty-five percent of the total amount invested in the stock against any state income tax liability imposed against the taxpayer. In any one taxable year, the amount of the credit allowed for deduction from the taxpayer's tax liability may not exceed twenty-five percent of the total amount of the credit; and in no case may the amount exceed twenty-five percent of the taxpayer's liability in that year. The amount of any remaining unused credit may be carried forward until the total amount of the credit is used. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which ~~that portion of the credit allowed by this section to be claimed in any one taxable year exceeds twenty-five percent of the taxpayer's tax liability in that year~~ may be carried back for not more than three taxable years or carried forward until the total amount of the credit is used for seven taxable years. No taxpayer claiming a credit under this section is eligible to claim a credit for the same investment under chapter 10-30.1.

SECTION 12. AMENDMENT. Section 10-30.2-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.2-13. Limitation on tax credits. The state tax commissioner shall allow tax credits pursuant to sections 10-30.2-11 and 10-30.2-12 which are attributable to not more than the first ~~five~~ ten million dollars of total investment in the corporation or in an affiliate of the corporation. However, the total amount of investments for which tax credits are allowed for all taxpayers under this chapter for the period beginning January 1, 1989, and ending December 31, 1990, is one million two hundred fifty thousand dollars. If investments reported to the state tax commissioner pursuant to section 14 of this Act exceed the ten million dollar limitation imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in either the corporation or an affiliate of the corporation as determined from the forms provided for in section 14 of this Act.

SECTION 13. AMENDMENT. Section 10-30.2-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.2-14. State and board of director immunity from liability. The state of North Dakota ~~is~~ and the board of directors are not liable for any

damage incurred by an investor in the corporation, or a separate legal entity such as a limited partnership created by the corporation as an affiliate for the purpose of obtaining investment capital from the public.

SECTION 14. A new section to chapter 10-30.2 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Investment reporting forms. Within thirty days of the date on which an investment is purchased, or within sixty days from the effective date of this Act, the corporation or an affiliate of the corporation must file with the state tax commissioner and provide to the investor the completed form prescribed by the state tax commissioner stating with respect to the investment in the corporation or an affiliate of the corporation the following:

1. The name, address, and identification number of the taxpayer who purchased the investment.
2. The dollar amount paid by the taxpayer for the investment.
3. The date on which the corporation or an affiliate of the corporation received full consideration for the investment.

SECTION 15. A new section to chapter 10-30.2 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Tax credit procedure. To receive the tax credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual tax return in the manner prescribed by the state tax commissioner and file with that tax return a copy of the form issued by the corporation or an affiliate of the corporation pursuant to section 14 of this Act.

SECTION 16. A new subsection to section 57-01-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

May, upon a showing of good cause, waive any and all tax due. A lien must have been filed against the debtor's property prior to the request for a waiver. The waiver must be approved by the attorney general.

* SECTION 17. AMENDMENT. Subdivisions j and l of subsection 1 of section 57-38-01.2 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- j. Reduced by any amount, up to a maximum of five thousand dollars, received pursuant to the United States Civil Service Retirement Act, firemen's relief associations authorized by chapters 18-05 and 18-11, or policemen's pension funds authorized by chapter 40-45; provided, however, that the adjustment provided in this subdivision shall be reduced by any amount received pursuant to the federal Social Security Act.
- l. Reduced by any amount, up to a maximum of five thousand dollars, received by any person sixty ~~sixty~~ fifty years of age or older as retired military personnel pay for service in the

* NOTE: Subdivision j of subsection 1 of section 57-38-01.2 was also amended by section 1 of House Bill No. 1384, chapter 709.

United States army, navy, air force, coast guard, or marine corps or reserve components thereof; provided, however, that the adjustment provided in this subdivision shall be reduced by any amount received pursuant to the federal Social Security Act.

SECTION 18. A new subdivision to subsection 1 of section 57-38-01.2 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Reduced by the amount, up to a maximum of five thousand dollars for any person or ten thousand dollars if a joint return is filed, of investment made after January 1, 1989, in either a venture capital corporation organized pursuant to chapter 10-30.1 or in the Myron G. Nelson Fund, Incorporated, or a separate legal entity such as a limited partnership created by the Myron G. Nelson Fund, Incorporated, as an affiliate, which entities are organized pursuant to chapter 10-30.2. This deduction may only be taken in the tax year in which the taxpayer qualifies for a credit pursuant to chapter 10-30.1 or 10-30.2. However, a taxpayer that makes an investment in a venture capital corporation on or after the effective date of this Act is only entitled to a deduction if the venture capital corporation uses the funds it receives from the taxpayer to invest or provide financing to qualified entities, which entities do not include a business or an affiliate of a business that owns tax-exempt securities.

SECTION 19. A new subdivision to subsection 1 of section 57-38-01.2 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Reduced by any amount, up to a maximum of five thousand dollars, received as retirement benefits paid by the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, other than retired military personnel pay, as exempted in subdivision 1; provided, however, that the adjustment provided in this subdivision must be reduced by any amount received pursuant to the federal Social Security Act.

SECTION 20. EFFECTIVE DATE. Sections 17 and 19 of this Act are effective for taxable years beginning after December 31, 1988.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 135

HOUSE BILL NO. 1160
(Committee on Industry, Business and Labor)
(At the request of the Bank of North Dakota)

VENTURE CAPITAL CORPORATION INVESTMENTS

AN ACT to amend and reenact sections 10-30.1-02 and 10-30.1-03 of the North Dakota Century Code, relating to investments made by venture capital corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-30.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-02. Certification - Investment reporting by venture capital corporations. At the request of a venture capital corporation, the ~~Bank of North Dakota~~ secretary of state shall certify whether a business meets the requirements of a qualified entity as defined in section 10-30.1-01. The ~~Bank of North Dakota~~ secretary of state shall establish the necessary forms and procedures for certifying qualified entities. Within fourteen days of making any investment, a venture capital corporation must give notice of the investment to the ~~Bank of North Dakota~~ secretary of state. The notice must contain the name of the business in which the venture capital corporation invested, the dollar amount of the investment, and the date on which the investment was made.

SECTION 2. AMENDMENT. Section 10-30.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-03. Unqualified investment - Civil penalties enforcement. The ~~Bank of North Dakota~~ secretary of state shall notify the attorney general of any investment made by a venture capital corporation in a business not certified as a qualified entity under section 10-30.1-02. The attorney general shall assess a civil penalty for ~~the~~ an investment made by a venture capital corporation in a business not certified as a qualified entity under section 10-30.1-02 and collect such civil penalty by a civil proceeding in any appropriate court. The civil penalty is twenty-five percent of the amount invested by the venture capital corporation in the business not certified as a qualified entity.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 136

SENATE BILL NO. 2234
(Committee on Industry, Business and Labor)
(At the request of the Governor)

STATEWIDE NONPROFIT EQUITY CORPORATION

AN ACT to provide for the establishment of a statewide nonprofit equity corporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this chapter unless the context otherwise requires, the term:

1. "Board of directors" means the board of directors of the corporation.
2. "Corporation" means the corporation established under this chapter.
3. "North Dakota business" means a business owned by a North Dakota resident, a partnership, association, or corporation domiciled in North Dakota or a corporation, including a wholly owned subsidiary of a foreign corporation that does business primarily in North Dakota or does substantially all of its production in North Dakota.
4. "Primary sector business" means an individual, corporation, partnership, or association which through a process employing knowledge and labor adds value to a product produced for resale.

SECTION 2. Purpose. It is the purpose of this Act to create a statewide nonprofit development corporation that will have the authority to take equity positions in new and existing businesses in North Dakota. The corporation's principal mission is the development and expansion of primary sector business in North Dakota. The corporation may form additional corporations, partnerships, or other forms of business associations in order to further its mission of primary sector economic development.

The exclusive focus of this corporation is business development in the state of North Dakota, however, it is not excluded from participation with other states or organizations in projects that have a clear economic benefit to North Dakota residents in the creation of jobs or secondary business.

SECTION 3. Organization. The statewide nonprofit development corporation must be managed by a board of directors. The board of directors shall adopt articles of incorporation and bylaws consistent with the purposes detailed in section 2 of this Act. The board of directors consists of five members who shall serve three-year terms. The terms must be staggered so that no more than two positions require reappointment in any one year. Members must be appointed by the governor who shall consider representatives from the following areas in making the selections: manufacturing, higher

education, finance, industrial technology and research, and private sector business. Members may be reappointed for additional terms.

SECTION 4. Powers. The corporation must be organized as a nonprofit corporation under chapter 10-24. In addition to the powers in chapter 10-24, the corporation has the power to:

1. Cooperate and contract with state agencies, colleges, universities, other private and public academic and research sources, agencies and organizations of the federal government, and all public or private entities.
2. Receive appropriations from the legislative assembly and other public moneys as well as contributions from other public agencies, private individuals, companies, and other contributors.

SECTION 5. Management. The board of directors shall ensure that the corporation is managed by a full-time director. The board of directors shall determine minimum qualifications of all staff positions.

All investments, contracts, partnerships, and business transactions of the corporation are the responsibility of the board of directors. The board may provide that normal operating costs anticipated in an approved budget may be incurred and paid without prior board approval.

SECTION 6. Divestiture. The board of directors shall establish a policy for divesting the corporation's interest in any business when certain levels of profitability are obtained.

SECTION 7. Confidentiality of corporation records. The following records of the corporation are confidential:

1. Commercial or financial information, whether obtained by the corporation directly or indirectly, of any entity in which an equity interest is purchased or considered for purchase under this chapter.
2. Internal or interagency memorandums or letters which would not be available by law to a party other than in litigation with the corporation.

SECTION 8. Annual audit. The board of directors shall contract with a certified public accounting firm to audit annually the financial statements of the corporation in accordance with generally accepted auditing standards. The cost of the audit must be borne by the corporation.

SECTION 9. Annual report. The corporation shall prepare and publish an annual report of its activities for the information of the governor, the legislative assembly, and the public. The report must include audited financial statements of the corporation for the fiscal year covered by the report and must specify:

1. The investment strategy and workplan approved by the board of directors.
2. The total investments made annually by the corporation in North Dakota businesses.
3. An estimate of jobs created and jobs preserved by investments of the corporation in North Dakota businesses.

Approved April 11, 1989
Filed April 12, 1989

COUNTIES

CHAPTER 137

HOUSE BILL NO. 1640
(Representatives Dalrymple, Gates, Wilkie)
(Senators Dotzenrod, Kelsh, Peterson)

COUNTY SUPERINTENDENT OF SCHOOLS

AN ACT to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to the salary and the office of the county superintendents of schools; to amend and reenact subsection 1 of section 11-08-08, sections 11-08-10, 11-08-13, sections 15-22-01, 15-22-02, 15-22-04, 15-22-09, and 15-22-25 of the North Dakota Century Code, relating to election, duties, and joint sharing by counties of county superintendents of schools; to repeal subsection 5 of section 11-08-06, section 11-09-24, subsection 9 of section 11-10-02, subsection 9 of section 11-10-06, sections 15-22-06, 15-22-08, and 15-22-24 of the North Dakota Century Code, relating to election of the county superintendent of schools, deputies, power of the county superintendent of schools to administer oaths, and contracts for services of the county superintendent of schools; and to provide for transition and an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 11-08-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. On or before the fifteenth day of January, the sheriff, state's attorney, ~~county superintendent of schools~~, and coroner must be appointed, and such officers shall qualify within ten days thereafter.

SECTION 2. AMENDMENT. Section 11-08-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-08-10. Board may appoint officers of adjoining county - Term of office - Compensation. The board of county commissioners may appoint the sheriff, or the state's attorney, and ~~county superintendent of schools~~, or ~~any one or more of such officers both~~, of an adjoining county to act as the sheriff, or state's attorney, or ~~county superintendent of schools~~ of its county. Any officer of an adjoining county so appointed shall serve for a term of two years and until his successor is appointed and qualified. He shall be eligible to serve in such dual capacity and shall receive, in addition to his salary as an officer of the county of his residence, a sum not exceeding one-half of such salary, to be fixed by the board of county commissioners. The additional salary shall be paid by the county in the same manner as other county officers are paid.

SECTION 3. AMENDMENT. Section 11-08-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-08-13. Powers and duties of other officers. The sheriff, state's attorney, ~~county superintendent of schools~~, and coroner appointed under this chapter shall perform the duties and exercise the powers conferred by law upon them.

SECTION 4. A new section to chapter 11-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

County superintendent of schools - Officer. For purposes of sections 11-10-10, 11-10-15, and 11-10-20, the county superintendent of schools employed by the board of county commissioners is an officer of the county.

SECTION 5. AMENDMENT. Section 15-22-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-22-01. Election - Term of office County superintendent of schools. There shall be elected in The presidents of the school boards of school districts whose headquarters are located within each organized county, at the same time as state officials are elected, a shall select a candidate to serve as county superintendent of schools. The presidents shall submit the name of the candidate selected to the board of county commissioners for approval. If the board of county commissioners does not approve the candidate, the presidents shall submit the name of another candidate. This process must continue until the board of county commissioners approves a candidate. The candidate approved by the board of county commissioners shall serve as the county superintendent of schools whose term of office shall be four years, commencing on the first Monday in January following his election; and until his successor is elected and qualified. The candidate selected shall serve as county superintendent of schools until the candidate resigns or is discharged by the board of county commissioners at the request of a majority of the presidents of the school boards within the county in the manner provided for discharge of superintendents pursuant to section 15-47-38.1. The presidents of the school boards in the county shall perform the same functions as the school board in section 15-47-38.1 with regard to evaluations, renewals, or discharges of county superintendents of schools.

SECTION 6. AMENDMENT. Section 15-22-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-22-02. Qualifications. The county superintendent of schools shall must be a qualified elector under the general laws of the state, a bachelor degree graduate of a regional or nationally accredited college or university approved for teacher education, shall must hold a valid teacher's certificate, and successful experience in teaching in an approved elementary or secondary school. Be it further provided that this This section shall is not be retroactive but that anyone serving as county superintendent on July 1, 1957, shall show evidence annually of work toward a bachelor degree in teacher education.

SECTION 7. AMENDMENT. Section 15-22-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-22-04. Salary of county superintendent of schools. The county superintendent of schools, for official services rendered, shall receive a salary determined as provided in section 11-10-10. If a county superintendent of schools is employed by more than one county, the combined

population of the counties must be taken into consideration for determining the county superintendent's salary under section 11-10-10.

SECTION 8. AMENDMENT. Section 15-22-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-22-09. Duties in general. The county superintendent of schools shall have the general superintendence of the schools in the county except those in districts which employ a district superintendent of schools and shall exercise such:

1. Receive and transmit to the superintendent of public instruction annual school district financial reports described in subsection 17 of section 15-29-08, annual school district personnel reports, annual school district enrollment and average daily membership reports described in section 15-40.1-09, biennial school census reports described in section 15-47-13, and other reports required by the superintendent of public instruction.
2. Assist in the planning, coordinating, and providing of all education and related services to each school district.
3. Decide all matters in controversy in the administration of school laws or appealed to the county superintendent of schools as provided in section 15-22-17.
4. Promote the maximum amount of coordination and cooperation among the school districts and the multidistrict special education units within the jurisdiction of the county superintendent of schools for the purposes of encouraging and making the school districts efficient and maximizing the educational opportunities for all students.
5. Assist school districts in taking optimum advantage of any incentive programs administered by the superintendent of public instruction.
6. Exercise other powers and perform such other duties as are prescribed by law.

SECTION 9. AMENDMENT. Section 15-22-25 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-22-25. Biennial plan required - Two or more counties or parts thereof may have a common county superintendent of schools —Petition by electors and formulation of plan—Approval reinstatement - Appeals. Whenever five percent of the qualified electors of a county or part thereof, as determined by the vote cast for the office of governor at the last general election at which such office was voted upon, shall sign and file a petition setting forth the areas with the county auditor of such county requesting that a county superintendent be elected by two or more contiguous counties or parts thereof to perform the functions of such office for such counties, the county auditor shall transmit a certified copy of such petition to the county auditors of the counties set forth in such petition. Upon receiving such petitions the boards of county commissioners of each county affected by said petition shall, either by joint action or upon a resolution passed by a majority of each board, formulate a plan for a county superintendent of

schools to serve the counties or parts thereof designated by such plan. Alternatively, and without the need of receiving petitions, the board of county commissioners of any county may, by resolution, formulate a plan to discontinue the office of the superintendent of schools of the county or parts thereof and combine with another county or counties or parts thereof for the election of a county superintendent of schools to perform the functions of such office for the counties or parts thereof involved. The county superintendent of schools shall be elected for a term of four years and serve as the county superintendent of schools for the counties or parts thereof designated by such plan. In formulating such plan, the board of county commissioners shall consult with school board presidents and the other boards of county commissioners of counties or parts thereof affected by such plan. Such plan shall encompass all necessary provisions relating to location and sharing of costs of the office so established, and the boards of county commissioners shall be authorized to expend funds of the several counties or parts thereof pursuant to such plan. By joint action or upon a resolution passed by a majority of each board, the boards of county commissioners shall call a public hearing by publishing a notice in the official newspaper in each county at least fourteen days prior to the date of hearing on the proposed plan. Pursuant to such public hearing such plan shall be submitted to the state board of public school education for approval or disapproval. Upon approval by the state board of public school education, the plan shall be submitted by the county auditor to a vote of the qualified electors in each county or parts of a county at an election held prior to July first preceding the expiration of the current term of office of county superintendent of schools. If a majority of the votes cast in each county or parts of a county be in approval, the plan shall go into effect with the beginning of the next term of office for the county superintendent of schools, provided the remaining part or parts of the county are embraced in a similar plan with another county. The county auditor of each county or parts thereof shall place the office on the regular no-party ballot. The canvassing of votes, certifying of nominations, and certifying of elections for any county superintendent elected under the provisions of this section shall be carried out in the same manner as for candidates for the legislative assembly.

Whenever five percent of the qualified electors of the county or parts thereof, as determined by the vote cast for the office of governor at the last general election at which such office was voted upon, shall sign and file a petition with the county auditor of the county involved requesting that a separate county superintendent be elected by each county, or when directed by the joint action or by resolutions passed by a majority of each board involved, the county auditor of each county involved in the plan for a combined county superintendent of schools shall submit the plan to a vote of the qualified electors in each county or parts of a county at an election held prior to July first preceding the expiration of the current term of office of the county superintendent of schools. If a majority of the votes cast in each county or parts of a county approves the plan, the plan shall remain in effect. If a majority of the votes cast in each county or parts of a county reject the plan, the plan shall be discontinued with the beginning of the next term of office for the county superintendent of schools and the office of county superintendent of schools shall be reinstated as it existed prior to formulation of the plan by the county commissioners.

1. The board of county commissioners of two or more counties may agree to jointly employ a county superintendent of schools to perform the functions of the office for the counties involved. Any county

which has less than one thousand persons over five and under eighteen years of age, as determined by the superintendent of public instruction for the previous school year, must combine with another county or counties for the purpose of jointly employing a county superintendent of schools. The board of county commissioners of such a county shall develop a plan to cooperate with another county or counties to employ a county superintendent of schools. If the board of county commissioners of each county cannot agree to share a county superintendent of schools, the superintendent of public instruction may require a county to participate in a plan to jointly employ a county superintendent of schools. Any plan to share a county superintendent of schools must be approved by a majority of the presidents of the school boards of each county affected by the plan and must be confirmed by the superintendent of public instruction. If a majority of the presidents of the school boards in each county cannot agree to the plan, both the presidents of the school boards of the counties affected and the boards of county commissioners of the counties affected shall submit a plan to the superintendent of public instruction for resolution. The decision of the superintendent may be appealed as provided in subsection 3. The plan must describe the amount and quality of educational services to be provided to school districts in the counties by the county superintendent of schools. The plan must be reviewed, and amended if necessary, by the boards of county commissioners and submitted to the presidents of the school boards for approval and to the superintendent of public instruction for confirmation biennially. The superintendent of public instruction may exempt a county from jointly employing a county superintendent of schools if the superintendent determines that, due to the geographic size of the county or the duties required of the county superintendent of schools in that county, sharing a county superintendent of schools would not be feasible. Each county jointly employing a county superintendent of schools must share the salary and other expenses attributable to the county superintendent of schools. The costs must be apportioned among the counties sharing the county superintendent of schools based on the number of persons over five and under eighteen years of age in each county.

2. The board of county commissioners of any county that elects not to share a county superintendent of schools with another county, or that has been exempted from sharing a county superintendent of schools by the superintendent of public instruction, must submit a plan biennially to the school boards of the school districts located within the county. The plan must describe the amount and quality of educational services to be provided to school districts in the county by the county superintendent of schools. The plan is approved if a majority of the presidents of the school boards in the county approve the plan and the plan is confirmed by the superintendent of public instruction. If a majority of the presidents of the school boards in the county cannot agree to the plan, both the presidents of the school boards and the board of county commissioners shall submit a plan to the superintendent of public instruction for resolution. The decision of the superintendent of public instruction may be appealed as provided in subsection 3.

3. If the superintendent of public instruction does not confirm a plan that has been approved locally, the superintendent of public instruction shall submit the plan to the state board of public school education for final resolution. A majority of the presidents of the school boards in a county or a board of county commissioners aggrieved by a decision of the superintendent of public instruction may appeal the decision to the state board of public school education. A decision of or resolution by the state board of public school education under this section is final. The superintendent of public instruction may not serve on the board when the board is resolving disputes under this section.

SECTION 10. REPEAL. Subsection 5 of section 11-08-06, section 11-09-24, subsection 9 of section 11-10-06, sections 15-22-06, 15-22-08, and 15-22-24 of the North Dakota Century Code, and subsection 9 of section 11-10-02 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 11. TRANSITION - EFFECTIVE DATE. The term of the county superintendents of schools initially selected and approved pursuant to section 5 of this Act begins on January 1, 1993. Sections 5, 6, and 9 of this Act become effective on July 1, 1992. Sections 1, 2, 3, 4, 7, and 10 become effective on January 1, 1993.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 138

HOUSE BILL NO. 1451
(Kretschmar)

DISTRICT COURT CLERK FUNDING

AN ACT to create and enact a new section to chapter 11-17; and to amend and reenact sections 11-10-02, 11-10-06, 11-10-10, 11-10-11, 11-17-05, and 27-01-01.1 of the North Dakota Century Code, relating to clerks of district court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-02. Number and election of county officers. Each organized county, unless it has adopted one of the optional forms of county government provided by the code, shall have the following officers:

1. One county auditor.
2. One register of deeds in counties having a population of more than six thousand.
3. One clerk of the district court.
4. One state's attorney.
5. One sheriff.
6. One county judge, except that the board of county commissioners of any two or more counties may enter into an agreement to provide for election of a judge or judges to serve the county courts of the counties entering the agreement.
7. One county treasurer.
8. One coroner.
9. One county superintendent of schools.
10. A board of county commissioners consisting of three or five members as provided in this title.

In counties having a population of six thousand or less, the register of deeds must be ex officio clerk of the district court must be the register of deeds, unless the board of county commissioners adopts a resolution separating the offices no less than thirty days before petitions for nomination to county offices may first be filed for the primary election. For a county which has properly initiated the option and it is funded by the

legislative assembly pursuant to section 5 of this Act, the board of county commissioners may provide for the register of deeds services in any appropriate manner. Counties having a population of six thousand or less and exercising the option provided in section 5 of this Act, may contract with the state court administrator for the provision of shared funding for register of deeds services. In counties having a population of twenty-five thousand or more, the county judge may appoint a clerk of county court. In counties with a population of less than twenty-five thousand, the clerk of district court must be clerk of county court unless the county has properly initiated the option and it is funded by the legislative assembly pursuant to section 5 of this Act, in which case the county judge may determine that the clerk of district court may provide clerk services to the county court or appoint a clerk of county court. The required officers must be chosen by the qualified electors of the respective counties at the general election in each even-numbered year, except the register of deeds, county auditor, treasurer, sheriff, state's attorney, county judge, and clerk of the district court, who shall be chosen in 1966 and every four years thereafter, the members of the board of county commissioners, who shall be chosen in the manner prescribed in section 11-11-02, and the county coroner, who shall be chosen in the manner prescribed in section 11-19.1-03. The clerk of district court elected pursuant to this section is not subject to election in any future general election which occurs after the start of the state biennium after the county has properly initiated the option and the legislative assembly has provided appropriations pursuant to section 5 of this Act.

SECTION 2. AMENDMENT. Section 11-10-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-06. Bonds of county officers. Before entering upon the duties of their respective offices, the following county officers must be bonded for the faithful discharge of their respective duties in the same manner as other civil officers are bonded and in the following amounts:

1. The county auditor, clerk of the district court, register of deeds, and sheriff, fifteen thousand dollars, except in counties having a population of less than ten thousand, where the amount must be ten thousand dollars.
2. A county commissioner, two thousand dollars.
3. The county coroner, five hundred dollars.
4. The state's attorney, three thousand dollars.
5. The county surveyor, an amount, not to exceed two thousand dollars, as may be determined by the board of county commissioners.
6. The public administrator, not less than ten thousand dollars.
7. The county treasurer, an amount fixed by the board of county commissioners of not less than seventy-five thousand dollars, except in counties having a population of less than ten thousand, an amount of not less than forty thousand dollars. When the total amount of taxes to be collected by the county treasurer in any one year is less than the minimum amount of bond specified in this subsection, the bond may be in a sum equal to the amount of taxes to be collected.

8. A county judge, ten thousand dollars.
9. A county superintendent of schools, five hundred dollars.

When the amount of any bond required under this section is dependent upon the population of a county, the population must be determined as provided in section 11-10-10. The bond for the clerk of a district court which is state funded pursuant to section 5 of this Act must be set by the supreme court.

* SECTION 3. AMENDMENT. Section 11-10-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-10. Salaries of county officers.

1. The salary of the county auditor, county treasurer, county superintendent of schools, register of deeds, county judge, clerk of district court, and sheriff shall be regulated by the population in the respective counties according to the last preceding official federal census from and after the date when the official report of such census shall have been published by the director of the census or such other official as may be charged with the duty of making such official publication. Notwithstanding any decreases in population, the salaries paid county officers as of July 1, 1981, reduced by any discretionary salary increase authorized by the county commissioners pursuant to this section, shall be at least the minimum amount payable for that office when filled on a full-time basis in the future.
2. The county treasurer, county superintendent of schools, register of deeds, county auditor, and clerk of district court each shall receive the following annual salary, payable monthly, for official services rendered:
 - a. Fifteen thousand one hundred dollars in counties having a population of less than eight thousand.
 - b. Fifteen thousand five hundred dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.

The compensation for the clerk of a district court which is funded by the state pursuant to section 5 of this Act must be set by the supreme court as a part of the judicial branch personnel system.

3. Repealed by S.L. 1975, ch. 87, § 2.
4. The salaries of the judges of county courts shall be as provided in section 27-07.1-04. The county superintendent of schools shall receive for any trips necessarily made within his county in the performance of school district reorganization duties the same mileage as he receives under the provisions of section 11-10-15.

* NOTE: Section 11-10-10 was also amended by section 4 of Senate Bill No. 2056, chapter 69, and section 1 of House Bill No. 1602, chapter 139.

The board of county commissioners of any county may, by resolution, increase the salary of any full-time county official provided in this section, if, in the judgment of such board, by reason of duties performed, the official merits the increase. The salary of a county official shall not be reduced during the official's term of office. Any county official performing duties on less than a full-time basis may be paid a reduced salary set by the board of county commissioners. In the event the county has for its employees, a group insurance program for hospital benefits, medical benefits, or life insurance, or a group retirement program, financed in part or entirely by the county, such benefits may be in addition to the salaries payable to county officials.

5. Each county commissioner may receive an annual salary or per diem as provided by resolution of the board, with a maximum of seven thousand five hundred dollars. In addition, there shall be an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15, and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01. As used in this section, the words "official business" shall include statewide meetings of the North Dakota county commissioners association.

If a board shall resolve to pay an annual salary pursuant to this subsection, it shall be paid in monthly installments.

6. Sheriffs shall receive the following annual salary, payable monthly, for official services rendered:
 - a. Seventeen thousand nine hundred dollars in counties having a population with less than eight thousand.
 - b. Eighteen thousand nine hundred dollars in counties having a population exceeding eight thousand plus additional compensation of one hundred dollars per year for each one thousand additional population or major fraction thereof over eight thousand. However, in counties where the population consists of more than twenty-five percent Indians who have not severed tribal relations, the county commissioners may adjust the salaries provided for herein within the limitations contained in this subdivision.
7. State's attorneys in counties having a population exceeding thirty-five thousand, or in other counties where the board of county commissioners has determined by resolution that the state's attorney shall be full time and shall not be an attorney or counsel for any party except the state or county, shall receive the same minimum annual salary paid to a county court judge as provided in section 27-07.1-04 as of January 1, 1985, but the county may increase that amount up to the same salary as a county court judge. State's attorneys not considered full time shall receive an annual salary of at least forty-five percent of the minimum salary paid to a county court judge as provided in section 27-07.1-04 as of January 1, 1985. The increase in salary necessary to meet the minimum may be spread over a two-year period with a minimum of a fifty percent increase for the first year. In addition, the county

may increase that amount, if, in the judgment of such board, by reason of duties performed, the state's attorney merits the increase.

* SECTION 4. AMENDMENT. Section 11-10-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-11. Appointment and salary of deputies and clerks. The number and salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, register of deeds, county judge, and clerk of the district court shall be fixed by a resolution of the board of county commissioners. None of the officers mentioned in this section shall appoint as his deputy any other officer mentioned in this section nor the deputy of any such officer. The board of county commissioners upon written recommendation and approval of the state's attorney may appoint one or more assistant state's attorneys or clerks and fix their compensation in the same manner as in the case of deputies and clerks in other county offices. The work of such assistant state's attorneys shall be assigned by the state's attorney. The number and compensation of deputies, clerks, and assistants for a clerk of district court which is funded by the state pursuant to section 5 of this Act must be set by the supreme court.

SECTION 5. A new section to chapter 11-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

County option for state funding of clerk of district court. The board of county commissioners of any county may initiate the option to transfer responsibility for funding for the clerk of district court to the state by the filing of written notice to the state court administrator before February first of the year prior to the start of the next state biennium, accompanied by:

1. A resolution of the board of county commissioners;
2. A resolution separating the offices of register of deeds and clerk of district court pursuant to section 11-10-02; and
3. A statement of income and expenses of the office of the clerk of court for the prior fiscal year and projected costs of the office for the next biennium.

Following approval by the supreme court, the state court administrator shall include in the comprehensive budget in section 27-01-01.1 all salaries and expenses for the clerk of district court and their deputies and employees for each county initiating the option. If approved by the legislative assembly, all clerks of the district court and their deputies and employees shall become employees of the North Dakota judicial system.

The clerk of district court at the start of the next biennium period may remain as full-time clerk of district court at a salary which is not less than the salary paid to the clerk of district court in the year prior to the start of that biennium period until the clerk retires or resigns. Thereafter, the clerk of district court must be employed by the North Dakota judicial system.

The clerk of district court options must be funded in the order of the date of the approval by the supreme court. If the legislative assembly does

* NOTE: Section 11-10-11 was also amended by section 1 of Senate Bill No. 2507, chapter 140.

not appropriate funds for the transfer of responsibility for funding for one or more clerks of district court to the state at the next legislative session after the date the county has initiated the option in section 5 of this Act, the state court administrator shall provide written notification to the appropriate boards of county commissioners. The unfunded option counties shall remain in priority order for future legislative action.

SECTION 6. AMENDMENT. Section 11-17-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-17-05. Clerk to keep record of fees - Monthly report to county auditor. The clerk of the district court shall keep a public record of all money received as fees for services rendered as clerk. Within three days after the close of each calendar month and also at the close of the clerk's term of office, the clerk shall file with the county auditor a statement under oath showing the amount of fees received as clerk since the date of the clerk's last report, and within three days thereafter the clerk shall deposit with the county treasurer the total sum of such fees which shall be used for facilities, except fees which the clerk is authorized expressly to retain.

SECTION 7. AMENDMENT. Section 27-01-01.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-01-01.1. Budgeting and financing of the supreme court and district courts. The state court administrator shall submit a comprehensive budget for the supreme court and the district courts to the legislative assembly. An informational copy of the budget shall be delivered to the director of the budget pursuant to section 54-44.1-13. The budget for the district courts shall include all salary and expenses for the district courts, including the juvenile courts, and their employees except the clerks of district courts and their deputies and employees, whose salaries and expenses shall be paid by the counties unless the county has properly exercised its option pursuant to section 5 of this Act. Each county shall provide the district court in that county with adequate chamber, court, and law library quarters, and lights and fuel and appropriate facilities for clerk of court services which are state funded pursuant to section 5 of this Act. Any equipment, furnishings, and law libraries in the control and custody of the district court on January 1, 1980, and any such property acquired from that date until July 1, 1981, shall continue to be in district court's custody and control until the state court administrator determines such items are no longer needed by the court. Any equipment and furnishings in the control and custody of a clerk of district court on the date of the exercise of the county option pursuant to section 5 of this Act, and any such property acquired from that date until the beginning of the next state biennium, shall continue in the district court's custody and control until the state court administrator determines such items are no longer needed by the judicial system. Upon that determination custody and control of the property shall revert back to the county. Each district court law library maintained by the state shall be available for use by the county court in that county.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 139

HOUSE BILL NO. 1602
(Lindgren, Oban, Shaft)

COUNTY COMMISSIONERS' SALARIES

AN ACT to amend and reenact subsection 5 of section 11-10-10 of the North Dakota Century Code, relating to salaries of county commissioners; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 5 of section 11-10-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Each county commissioner may receive an annual salary or per diem as provided by resolution of the board, with a maximum of eight thousand two hundred dollars in counties with a population in excess of ten thousand and a maximum of seven thousand five hundred dollars in counties with a population of ten thousand or less. In addition, there shall be an allowance for meals and lodging expenses at the same rate and under the same conditions as provided for state officials and employees. The allowance for travel expenses shall be at the same rate as provided by section 11-10-15, and shall be evidenced by a subvoucher or receipt as provided by section 21-05-01. As used in this section, the words "official business" shall include statewide meetings of the North Dakota county commissioners association.

If a board shall resolve to pay an annual salary pursuant to this subsection, it shall be paid in monthly installments.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1990.

Approved March 22, 1989
Filed March 23, 1989

- * NOTE: Section 11-10-10 was also amended by section 4 of Senate Bill No. 2056, chapter 69, and section 3 of House Bill No. 1451, chapter 138.

CHAPTER 140

SENATE BILL NO. 2507
(Senators Axtman, Kelsh)
(Representative B. Anderson)

ASSISTANT STATE'S ATTORNEYS

AN ACT to amend and reenact sections 11-10-11 and 11-16-02 of the North Dakota Century Code, relating to assistant state's attorneys.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 11-10-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10-11. Appointment and salary of deputies and clerks. The ~~number~~ and salaries of deputies, clerks, and assistants for the county auditor, county treasurer, sheriff, register of deeds, county judge, and clerk of the district court and state's attorney shall be fixed by a resolution of the board of county commissioners. ~~None~~ Each of the named officers may appoint such deputies, clerks, and assistants, in accordance with the budget, except none of the officers mentioned in this section shall appoint as his deputy any other officer mentioned in this section nor the deputy of any such officer. The board of county commissioners upon written recommendation and approval of the state's attorney may appoint one or more assistant state's attorneys or clerks and fix their compensation in the same manner as in the case of deputies and clerks in other county offices. The work of such assistant state's attorneys shall be assigned by the state's attorney.

SECTION 2. AMENDMENT. Section 11-16-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-16-02. Assistant - Appointment - Duties. The state's attorney may appoint an assistant state's attorney within his county attorneys, who, when ~~he has~~ qualified by filing his the required oath of office, shall have the same powers as, and shall perform any and all duties required of, the state's attorney. The state's attorney shall be responsible, under ~~his~~ the state's attorney's official bond, for any and all acts of such assistant. The work of an assistant state's attorney must be assigned by the state's attorney.

Approved March 28, 1989
Filed March 28, 1989

* NOTE: Section 11-10-11 was also amended by section 4 of House Bill No. 1451, chapter 138.

CHAPTER 141

HOUSE BILL NO. 1572
(Skjerven)

COUNTY "QUICK TAKE" EMINENT DOMAIN

AN ACT to create and enact a new section to chapter 11-10 of the North Dakota Century Code, relating to immediate possession of property by counties exercising eminent domain authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Appeal after deposit for taking. When the county seeks acquisition of right of way through eminent domain proceedings authorized by chapter 32-15, the board of county commissioners may make an offer to purchase the right of way and deposit the amount of the offer with the clerk of the district court and thereupon take immediate possession of the right of way as authorized by section 16 of article I of the Constitution of North Dakota. Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of property as authorized in this section, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the board of county commissioners, and the matter must be tried at the next regular or special term of court with a jury unless a jury is waived, in the manner prescribed for trials under chapter 32-15.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 142

SENATE BILL NO. 2229
(Committee on Finance and Taxation)
(At the request of the Tax Department)

TAXATION REVISIONS

AN ACT to amend and reenact sections 11-10.1-01, 11-10.1-02, 11-10.1-03, 11-10.1-04, subsection 2 of section 11-10.1-05, sections 11-10.1-07, 11-23-01, 57-02-08.1, 57-06-01, 57-14-01, and 57-61-01.1 of the North Dakota Century Code, relating to the qualifications of a county director of tax equalization, property tax credits for persons sixty-five years of age or older with limited income, the exemption of rural water pipelines from central ad valorem assessment, the duty of a county auditor to correct clerical errors, and the coal severance tax exemption for coal used for space heating purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-10.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10.1-01. County director of tax equalization.

1. Prior to September 1, 1978, the board of county commissioners of each county in this state shall appoint a county director of tax equalization who shall be qualified and experienced in property appraisals, familiar with assessment and equalization procedures and techniques and who is the holder of a current ~~assessor's~~ certificate issued by the state supervisor of assessments. The state supervisor of assessments shall confer with representatives of the county commissioners, city governing bodies, state township officers' association, and personnel at North Dakota state university to establish the minimum requirements for attaining ~~an assessor's~~ the certificate. Any person who is denied such certificate may appeal to the state tax commissioner for a hearing under the provisions of chapter 28-32.
2. The board of county commissioners may, in its discretion, appoint a person on a probationary basis who does not hold a current certificate as provided for in subsection 1, if the board deems such person qualified to act as county director of tax equalization by virtue of education, training, and experience. ~~Such~~ The appointment shall be for a term of not more than three years. Any person receiving ~~such a~~ probationary appointment who does not obtain ~~an assessor's~~ a certificate within three years ~~of his~~ from the appointment, shall not be eligible for reappointment.
3. The county director of tax equalization shall serve at the pleasure of the board of county commissioners and may be employed on a full-

time or part-time basis. Vacancies in the office of county director of tax equalization shall be filled in the same manner as the original appointment.

SECTION 2. AMENDMENT. Section 11-10.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10.1-02. Bond - Oath of office. Each county director of tax equalization ~~and his or deputy~~, before ~~entering upon his performing the~~ duties of office, shall take and subscribe the oath required of public officials and shall give bond in ~~such~~ a sum as may be prescribed by the board of county commissioners for the faithful performance of the duties of ~~his the~~ office. County directors of tax equalization and their deputies shall be bonded through the state bonding fund.

SECTION 3. AMENDMENT. Section 11-10.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10.1-03. Deputies - Clerks. The county director of tax equalization, within budgetary limits prescribed by the board of county commissioners, may appoint ~~such~~ full-time or part-time deputies and clerks as may be necessary for the proper performance of the duties of ~~his the~~ office and they shall receive such compensation as may be authorized by the board of county commissioners.

SECTION 4. AMENDMENT. Section 11-10.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10.1-04. Payment of expenses. A county director of tax equalization and ~~his any~~ deputies ~~and~~ or clerks shall receive mileage as provided in section 11-10-15 and their actual and necessary traveling expenses at the rate and in the same manner as provided for other county officials. The board of county commissioners shall furnish to the county director of tax equalization and ~~his the~~ staff suitable office space and supplies as may be necessary for the proper discharge of the duties of ~~his the~~ office. The salary and expenses of the county director of tax equalization, ~~his clerks and deputies and any deputies or clerks~~, and the expense of ~~his the~~ office shall be paid from the general fund of the county.

SECTION 5. AMENDMENT. Subsection 2 of section 11-10.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. On January 1, 1981, the county director of tax equalization shall succeed to all the powers and duties of assessors of townships, cities with a population of under five thousand, and unorganized districts within ~~such~~ the county, except that any city with a population of under five thousand or township may, at its option by resolution of its governing body, employ an assessor who shall retain ~~such~~ the powers, duties, and responsibilities of ~~his the~~ office. The resolution of a city or township governing body to employ an assessor shall continue in force until rescinded by the governing body. Notwithstanding any other provision of law to the contrary, the state supervisor of assessments shall confer with representatives of the county commissioners, city governing bodies, state township officers association, and personnel at North Dakota state university to establish minimum requirements for all city and township assessors. ~~Such The~~ standards shall reflect their limited

jurisdiction and need not be equal to those minimum requirements set for county directors of tax equalization. Any courses of instruction included in those minimum requirements for assessors of townships or cities with a population under five thousand shall be conducted by the county director of tax equalization who may cooperate with other county directors of tax equalization in holding joint classes. The county director of tax equalization may call upon the state supervisor of assessments for such any necessary materials and assistance as may be required. No person shall serve as a city or township an assessor of a township or a city with a population under five thousand for longer than twelve months before being certified by the state supervisor of assessments as having met such the minimum requirements. No person may serve as an assessor of a city with a population of five thousand or more for longer than three years before being certified by the state supervisor of assessments as having met the minimum requirements. The expenses and salaries of city and township assessors shall be paid by the city or township exercising this option.

SECTION 6. AMENDMENT. Section 11-10.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-10.1-07. Joint county director of tax equalization - County directors may also be city assessors or township assessors. The respective boards of county commissioners of two or more counties may by agreement and resolutions of the respective boards of county commissioners employ a joint county director of tax equalization who shall act as county director of tax equalization for each of the counties participating in such the agreement. The salary and expense of such the joint county director of tax equalization and that of his the office and staff shall be prorated among the counties participating in accordance with the assessed valuation of the counties concerned or upon such any other basis as may be agreed upon by the respective boards of county commissioners. The respective boards of county commissioners, acting jointly, shall appoint such the joint county director of tax equalization on the same basis and in the same manner as a county director of tax equalization may be appointed for a single county. Such The joint county director of tax equalization may be discharged upon the resolution of the board of county commissioners of any county participating in the agreement. Any participating county may withdraw from such the joint agreement upon resolution of the board of county commissioners and by giving written notice to the boards of county commissioners of the other participating counties at least ninety days in advance of July first of the year of withdrawal. The joint county director of tax equalization shall have all the powers and duties of the county director of tax equalization of a single county and shall keep all records of assessment for each county entirely separate from the records of other counties which he or she serves served by the joint county director of tax equalization. The governing boards of a county and of any city, or any township, may by agreement and resolutions of the respective boards employ a joint county director of tax equalization and city or township assessor.

* SECTION 7. AMENDMENT. Section 11-23-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-23-01. Officers required to furnish commissioners with budget. Every officer in charge of any institution, office, or undertaking supported

* NOTE: Section 11-23-01 was also amended by section 1 of Senate Bill No. 2136, chapter 153.

wholly or in part by the county shall file with the board of county commissioners on or before July sixth of each year, on suitable blanks prescribed by the state ~~tax commissioner~~ auditor and furnished by the board, an itemized statement of the amounts of moneys which, in the opinion of ~~such~~ the officer, will be required for the proper maintenance, extension, or improvement of ~~such~~ the institution, office, or undertaking for the fiscal year next ensuing. The statement shall explain any difference between the amount of an estimate and the latest appropriation for the same purpose and it shall cite the laws relating thereto. The board or officer having charge of any poor relief which is supported wholly or in part by the county in like manner shall furnish the board of county commissioners with statements of the estimated amounts required from the county for poor relief during the ensuing fiscal year. The board of county commissioners, on or before June first of each year, shall furnish suitable blanks to each officer or person required to make such statement.

* SECTION 8. AMENDMENT. Section 57-02-08.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-08.1. Property tax credits for persons sixty-five years of age or older with limited income.

1. Any person sixty-five years of age or older in the year in which the tax was levied, or any person who is permanently and totally disabled in the year in which the tax was levied, as certified by a physician selected by the local governing body, with an income of twelve thousand dollars or less per annum from all sources, including the income of any dependent person ~~dependent upon him~~, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall receive a reduction in the assessment on the taxable valuation on ~~his~~ the homestead as defined in section 47-18-01, except that this exemption shall apply to any person who otherwise qualifies under the provisions of this subsection regardless of whether ~~or not such~~ the person is the head of a family. The exemption to which any person may be entitled shall be determined according to the following schedule:
 - a. If the person's income is not in excess of six thousand dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand dollars of taxable valuation.
 - b. If the person's income is in excess of six thousand dollars and not in excess of seven thousand five hundred dollars, a reduction of eighty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand six hundred dollars of taxable valuation.
 - c. If the person's income is in excess of seven thousand five hundred dollars and not in excess of nine thousand dollars, a reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand two hundred dollars of taxable valuation.

* NOTE: Section 57-02-08.1 was also amended by section 1 of Senate Bill No. 2083, chapter 693, and section 1 of House Bill No. 1245, chapter 694.

- d. If the person's income is in excess of nine thousand dollars and not in excess of ten thousand five hundred dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of eight hundred dollars of taxable valuation.
- e. If the person's income is in excess of ten thousand five hundred dollars and not in excess of twelve thousand dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of four hundred dollars of taxable valuation.

In no case shall a husband and wife who are living together both be entitled to the credit as provided for in this subsection upon their homestead. The provisions of this subsection shall not reduce the liability of any person for special assessments levied upon ~~his~~ any property. Any person eligible for the exemption herein provided shall sign a statement that the person is sixty-five years of age or older or is permanently and totally disabled, that ~~such~~ the person's income, including that of any dependent, as determined in this chapter does not exceed twelve thousand dollars per annum and that the value of the person's assets, excluding the value of the person's "homestead" as defined in section 47-18-01, does not exceed fifty thousand dollars. The term "dependent" shall include the spouse, if any, of the person claiming the exemption. The assessor shall attach ~~such~~ the statement to the assessment sheet and shall show the reduction on the assessment sheet.

2. Any person sixty-five years of age or older, or any person who is permanently and totally disabled as certified by a physician selected by the local governing body, with an income of twelve thousand dollars or less per annum from all sources, including the income of any dependent person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, and who rents living quarters shall be eligible for refund for that part of ~~his~~ the annual rent which is deemed by this subsection to constitute the payment of property tax and which is further deemed to represent a burdensome share of his income. For the purpose of this subsection, twenty percent of the annual rent, exclusive of any federal rent subsidy and of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as part of the rental agreement, whether or not expressly set out in the rental agreement, shall be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, said applicant shall receive a refund from the state general fund for that amount in excess of four percent of ~~his~~ the person's annual income, but ~~such~~ the refund shall not be in excess of two hundred ten dollars. If the calculation for ~~said~~ the refund is less than five dollars, a minimum of five dollars shall be sent to the qualifying applicant. In no case shall a husband and wife who are living together both be entitled to the refund as provided for in this subsection. Each application for refund under this subsection shall be made to the tax commissioner before the first day of June

of each year by the person claiming the refund. The tax commissioner shall certify to the state treasurer the amount of the refund due, if any, and the state treasurer shall issue the refund from the state general fund to the applicant. In no case shall this subsection apply to rents or fees paid by a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if that living quarter has been declared exempt from property taxation.

3. All forms necessary to effectuate this section shall be prescribed and designed by the tax commissioner who shall annually distribute an adequate supply of ~~same~~ them to each county director of tax equalization. The county directors of tax equalization shall make these forms available upon request.
4. In determining a person's income for eligibility under this section, the amount of medical expenses actually incurred by that person or any dependent person ~~dependent upon him~~ and not compensated for by insurance or otherwise shall be deducted. For purposes of this section, the term "medical expenses" shall have the same meaning as it has for state income tax purposes.
5. No person whose homestead as defined in section 47-18-01 is a farm structure exempt from taxation under subsection 15 of section 57-02-08 shall receive any property tax credit under this section.

SECTION 9. AMENDMENT. Section 57-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-06-01. Public utilities subject to provisions of chapter. The provisions of this chapter shall govern the assessment of the property of any public utility company defined in section 57-06-02, and of any other company used directly or indirectly in carrying or conveying persons, property, or messages, unless the operative property is subject to a lieu tax in place of a general property tax. This chapter shall not apply to the property of any railway or street railway company, nor to the ~~personal~~ property of a company, the only business of which is providing signaling, paging, or other domestic public land mobile radio service if that service has seven hundred subscribers or less, nor to the fixtures, buildings, and improvements owned by any cooperative or nonprofit corporation organized under the laws of this state and used by it to furnish potable water to its members and customers for uses other than irrigation of agricultural land, and except as otherwise provided in chapter 57-32, shall not apply to the property of any ~~car line~~, express, or air transportation company.

SECTION 10. AMENDMENT. Section 57-14-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-14-01. Duty of county auditor upon discovery of clerical error, omission, or false statement in assessment. Whenever the county auditor shall discover that:

1. Taxable real property has been omitted in whole or in part in the assessment of any year or years;

2. Any building or structure has been listed and assessed against a lot or tract of land other than the true site or actual location of such building;
3. The assessor has not returned the full amount of all property required to be listed in the district, or has omitted property subject to taxation; or
4. The assessor has made a clerical error in valuing real property, provided the assessor furnishes the county auditor with a written statement describing the nature of the error, which statement the county auditor shall keep on file,

the ~~assessor~~ county auditor shall proceed to correct the assessment books and tax lists in accordance with the facts in the case and shall correct such error or omission in assessment, and shall add such omitted property and assess it at its true and full value, and if a building or other structure, assessed as real estate in the assessment thereof, is described as though situated upon a lot or tract of land other than that upon which it in fact is situated, the county auditor shall correct the description and add the assessment thereof to the assessment of the lot upon which it actually is located, if the rights of a purchaser for value without actual or constructive notice of such error or omission shall not be prejudiced by such correction, addition, or assessment.

SECTION 11. AMENDMENT. Section 57-61-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-61-01.1. Severance tax exemption for coal used for space heating purposes and by the state and political subdivisions. No severance tax shall be imposed on coal used primarily for heating buildings in this state, including the heating of buildings with steam created by the burning of coal, nor shall any severance tax be imposed on coal used by the state or any political subdivision of the state. The coal mine owner or operator shall require the person purchasing the coal for heating of buildings, for resale to consumers for heating of buildings, or for use by the state or any political subdivision of the state to certify the amount of the coal purchased which will be used for heating purposes or by the state or any political subdivision. ~~Coal used by a person, other than the state or a political subdivision of the state, who purchases the coal primarily for a purpose other than the heating of buildings or for the generation of electricity for multiple uses is not exempt from the severance tax.~~

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 143

HOUSE BILL NO. 1544
(Ulmer, Timm, Gerl, A. Hausauer)

UNCERTIFIED ASSESSOR'S ASSESSMENT REVIEW

AN ACT to create and enact a new subsection to section 11-10.1-05 of the North Dakota Century Code, relating to an ad valorem assessment that is made by an assessor who is not certified as qualified for that assessment jurisdiction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 11-10.1-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any assessment made by an assessor who is not certified as qualified for that assessment jurisdiction must be reviewed and approved by a certified county director of tax equalization, or a certified city assessor of a city with a population of five thousand or more, prior to the township or city board of equalization annual meeting. The cost of the assessment review must be paid by the township or city having jurisdiction over the assessment at the same rate as paid to a special assessor in section 57-14-08.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 144

SENATE BILL NO. 2414
(Olson)

RURAL PAWNBROKER REGULATION

AN ACT to create and enact a new subsection to section 11-11-14 of the North Dakota Century Code, relating to pawnbrokers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 11-11-14 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To license, tax, and regulate pawnbrokers outside of municipalities.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 145

HOUSE BILL NO. 1494
(Representatives Tomac, Graba, Gerhardt)
(Senators Satrom, Mushik)

COUNTY PARKS FINANCING

AN ACT to create and enact a new subsection to section 11-11-14, a new section to chapter 11-28, a new subsection to section 57-15-06.7, and a new section to chapter 57-15 of the North Dakota Century Code, relating to powers of the board of county commissioners, the collection of user fees by board of county park commissioners and issuance of evidences of indebtedness in anticipation of user fee revenue, and to provide mill levy authority for support of county parks and recreational facilities; to amend and reenact subsection 4 of section 11-11-14, subsection 2 of section 11-28-05, subsection 1 of section 21-03-06, subsection 6 of section 21-03-07, and section 55-04-01 of the North Dakota Century Code, relating to the acquisition, construction, equipping, and financing of county parks and recreational facilities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 11-11-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. To liquidate indebtedness of the county control the finances, to contract debts and borrow money, to make payments of debts and expenses, to establish charges for any county or other services, and to control the property of the county.

SECTION 2. A new subsection to section 11-11-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

To acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its name for use and control as provided by law, both real and personal property and easements and rights of way within the county for all purposes authorized by law or necessary to the exercise of any power granted.

SECTION 3. AMENDMENT. Subsection 2 of section 11-28-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Accept on behalf of the county any and all lands and waters and any and all interests, easements, or rights therein, and any gifts, grants, donations, or trusts in money or property, or other assistance, financial or otherwise, from federal, state, municipal, and other public or private sources for park and recreational purposes; and accept and assume the supervision, control, and management of any privately owned property or recreational area,

when the conditions of the offer for its public use are such as in the judgment of the board will be conducive to the best interests of the people of the county and state; and acquire by lease, purchase, gift, devise, or otherwise and hold, own, possess, and maintain real and personal property for parks and recreational purposes.

SECTION 4. A new section to chapter 11-28 of the North Dakota Century Code is hereby created and enacted to read as follows:

Board of county park commissioners authorized to collect user fees and issue evidences of indebtedness in anticipation of user fee revenues.

1. A board of county park commissioners may prescribe and collect user fees for facilities or activities furnished by the county and in anticipation of the collection of such revenues may issue evidences of indebtedness for the purpose of acquiring, constructing, improving, and equipping parks and park and recreational buildings and facilities, and for the purpose of acquiring land for those purposes.
2. Evidences of indebtedness issued under this section are payable, as to principal and interest, solely from all or part of the revenues referred to in this section and pledged for such payment.
3. Notwithstanding any other provision of law, evidences of indebtedness issued under this section are fully negotiable, do not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and together with interest thereon and income therefrom, are not subject to taxation by the state of North Dakota or any political subdivision of the state.
4. Evidences of indebtedness issued under this section must be authorized by resolution of the board of county park commissioners and, notwithstanding any other provision of law, may be issued and sold in such manner and amounts, at such times, in such form, and upon such terms, bearing interest as such rate or rates, as may be determined in the resolution.

SECTION 5. AMENDMENT. Subsection 1 of section 21-03-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. By any county:
 - a. To provide county buildings, but all outstanding unpaid bonds for this purpose shall not exceed in amount at any one time five percent of the value of taxable property in such county.
 - b. To construct, enlarge, or repair, or aid in the construction, enlargement, or repair, of bridges within or without the county, but all outstanding unpaid bonds for this purpose shall not exceed in amount at any one time one percent of the value of taxable property in the county.

- c. To provide funds for the original construction and for the improvement and maintenance of highways, but all outstanding unpaid bonds for these purposes shall not exceed in amount at any one time four percent of the value of taxable property in such county.
- d. To provide funds for the construction of solid waste disposal facilities, for the acquisition of real estate for that purpose, for facilities and equipment for the collection of solid wastes, and for facilities and equipment to dispose of waste products.
- e. To provide money for the payment of any deficiency in the fund of any special improvement district whenever the special assessment or taxes levied and collected for the specific improvements are insufficient to pay the principal or interest of any special improvement warrants or bonds issued for the improvement and due and unpaid, but only to the extent of that deficiency.
- f. To provide funds for the acquiring, laying out, equipping, and improving parks and recreational facilities and to acquire land for these purposes.

SECTION 6. AMENDMENT. Subsection 6 of section 21-03-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 6. The governing body of any county may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section sections 57-15-06.6 and 9 of this Act and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of regional or county correction centers, or parks and recreational facilities; provided, that the initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the county may within sixty days after publication file with the county auditor a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the county, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

SECTION 7. AMENDMENT. Section 55-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-04-01. Authority of state or county to acquire title to lands for park purposes. The state, and each county of the state, is authorized to acquire by purchase, exchange, gift, condemnation, or otherwise the title to any lands or to lease any lands within the same political subdivision for the purpose of reestablishing a public park or recreational area, or for the

purpose of constructing, maintaining, and operating any water or wildlife conservation project.

SECTION 8. A new subsection to section 57-15-06.7 of the North Dakota Century Code is hereby created and enacted to read as follows:

A county levying a tax for county parks and recreational facilities in accordance with section 9 of this Act may levy a tax not exceeding three mills.

SECTION 9. A new section to chapter 57-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Tax levy for county parks and recreational facilities. A board of county park commissioners established pursuant to chapter 11-28, may levy taxes annually not exceeding the limitation in section 8 of this Act for a fund for the purpose of acquiring real estate as a site for public parks, construction of recreational facilities, renovation and repair of recreational facilities, and the furnishing of recreational facilities. The tax is to be levied, spread, and collected in the same manner as are other taxes in the county. The question of whether the levy is to be discontinued must be submitted to the qualified electors at the next regular election upon petition of twenty-five percent of the qualified electors voting in the last regular county election, if the petition is filed not less than sixty days before the election; provided, however, that the levy may not be discontinued or reduced if such tax is dedicated to the payment of bonds issued pursuant to subsection 6 of section 21-03-07. If the majority of the qualified electors vote to discontinue the levy, it may not again be levied without a majority vote of the qualified electors at a later regular election on the question of relevying the tax, which question may be submitted upon petition as above provided or by decision of the governing board. The levy under this section does not apply to any property located in a city in which park district taxes are levied, unless the governing body of the city in which the property is located consents, by resolution, to the levy.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 146

SENATE BILL NO. 2426
(Senator Keller)
(Representatives Knell, Gunsch)

SHERIFF'S FEES

AN ACT to amend and reenact section 11-15-07 of the North Dakota Century Code, relating to fees to be charged by the sheriff.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-15-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-15-07. County fees. The sheriff shall charge and collect the following fees on behalf of the county:

1. For serving a capias with commitment of bail and return, twenty-five dollars.
2. For serving a summons, writ of attachment, order of replevin, injunctional order, citation, and other mesne process and making a return thereon, a total of ~~seven~~ ten dollars and ~~fifty cents~~ for each person served at different locations.
3. For making a copy of a summons or order of attachment, two dollars.
4. For making a copy of an injunctional order, two dollars.
5. For serving a subpoena on a witness, each person, ~~seven~~ ten dollars and ~~fifty cents~~.
6. For taking and filing a bond in claim and delivery or any other undertaking to be furnished and approved by the sheriff, ~~seven~~ ten dollars and ~~fifty cents~~.
7. For making a copy of any process, bond, or paper, other than as is herein provided, two dollars per page.
8. For levying a writ of execution and making a return thereof, ~~fifteen~~ twenty-five dollars.
9. For levying a writ of possession with the aid of the county, ten dollars.
10. For levying a writ of possession without the aid of the county, ten dollars.
11. For serving a notice of motion or other notice or order of the court, ~~seven~~ ten dollars and ~~fifty cents~~.

12. For executing a writ of habeas corpus and making a return thereon, ~~five~~ ten dollars.
13. For serving a writ of restitution and making a return thereon, ~~five~~ ten dollars.
14. For calling an inquest to appraise any goods and chattels which he may be required to have appraised, ~~five~~ ten dollars, and each appraiser shall receive ~~twenty~~ fifty dollars to be taxed as costs.
15. For advertising a sale in a newspaper, in addition to the publisher's fees, ~~five~~ ten dollars.
16. For advertising in writing for the sale of personal property, five dollars.
17. For executing a writ or order of partition, ~~five~~ ten dollars.
18. For making a deed to land sold on execution or pursuant to an order of sale, ~~five~~ ten dollars.
19. For issuing a certificate of redemption when property has been redeemed from a sale under execution or upon the foreclosure of a mortgage, ~~five~~ ten dollars.
20. For selling real or personal property under foreclosure of any lien or mortgage by advertisement, ~~fifteen~~ fifty dollars.
21. For boarding prisoners, a sum to be determined by the county commissioners, by resolution in advance, which sum shall be per meal for meals actually served, and shall be not to exceed less than two dollars for breakfast, two dollars and fifty cents for dinner, and three dollars and fifty cents for supper.
- ~~22. For issuing permit or license to carry pistol or revolver, four dollars; and for renewal of such permit or license, two dollars.~~

Approved March 22, 1989

Filed March 23, 1989

CHAPTER 147

HOUSE BILL NO. 1393
(Representatives Knell, Gunsch)
(Senator Keller)

SHERIFF'S COMMISSIONS

AN ACT to amend and reenact section 11-15-08 of the North Dakota Century Code, relating to commissions collected by sheriff in certain proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-15-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-15-08. Commissions collected by sheriff.

1. Except as ~~otherwise~~ provided in section 11-15-09, the sheriff is entitled to collect commissions on all moneys received and disbursed by ~~him~~ the sheriff on an execution, order of sale, order of attachment, requisition in claim and delivery, or decree for the sale of real or personal property, as follows:
 - 1- a. On the first four hundred dollars, ~~three percent.~~
 - 2- ~~On all moneys in excess of four hundred dollars and not exceeding one thousand dollars, two percent~~ fifty dollars.
 - 3- b. On all moneys in excess of one thousand dollars, one percent.
2. ~~in all cases where~~ If personal property is taken by the sheriff on an execution, under a requisition in claim and delivery, or under a writ of attachment and applied in satisfaction of the debt without sale, the sheriff is entitled to collect the percentage commission specified in ~~this section~~ subsection 1 based upon the appraised value of the property. The sheriff shall deliver the commissions to the county treasurer ~~in accordance with~~ under section 11-15-14.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 148

SENATE BILL NO. 2245
(Committee on Human Services and Veterans Affairs)
(At the request of the Department of Human Services)

CHILD AND SPOUSAL SUPPORT

AN ACT to create and enact sixteen new sections to chapter 14-09 of the North Dakota Century Code, relating to support payments and procedures, income withholding for child support enforcement, periodic review of child support orders, and medical support enforcement for child support; to amend and reenact subsection 15 of section 11-16-01, sections 14-09-09.6, 14-09-09.7, 14-09-09.10, 14-09-09.11, 14-09-09.12, 14-09-09.13, 14-09-09.14, subsections 1 and 2 of section 14-09-09.16, sections 14-09-09.17, 14-09-09.19, 14-09-09.21, subsection 1 of section 14-17-04, subsection 2 of section 14-17-05, section 14-17-10, subsection 3 of section 14-17-11, subsection 3 of section 14-17-12, sections 14-17-15, and 50-09-06 of the North Dakota Century Code, relating to spousal support and child support, income withholding for child support enforcement, genetic testing for child support, and assignment of support rights; to repeal sections 14-08-07, 14-08-08, 14-08-09, 14-08-10, and subsection 5 of section 14-17-14 of the North Dakota Century Code, relating to support payments and procedures and judgments or orders for child support; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 15 of section 11-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15. Assist the district court in behalf of the recipient of payments for child support or ~~alimony~~ spousal support combined with child support in all proceedings instituted to enforce compliance with a decree or order of the court requiring such payments.

SECTION 2. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Support payments - Payment to court - Transfer of payment to court of recipient's residence - Transfer of proceedings for enforcement of decree - Procedures upon failure to pay.

1. In any action in which a court orders that payments for child support be made, the court shall provide in its order that the payments be paid to the clerk of court, as trustee, for remittance to the obligee. The clerk shall remit the payments within ten working days of receipt unless the address of the obligee is unknown to the clerk. The clerk shall maintain records listing the amount of the payments, the date when the payments must be made, the names and addresses of the parties subject to the order, and

any other information necessary for the proper administration of the order. Upon the filing with the clerk of court of notice of the assignment of support rights to a state, payments must be credited and transmitted pursuant to the assignment and in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651, et seq., as amended]. The parties subject to the order shall immediately inform the clerk of their social security numbers and of any change of address or change of any other condition which may affect the proper administration of this chapter. Whenever there is failure to make the payments as required, the clerk shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district, on a form provided by the judge, to issue a citation for contempt of court against the person who has failed to make the payments and the citation must be served on that person as provided by the North Dakota Rules of Civil Procedure.

2. The court of its own motion or on motion of the state's attorney of the county of venue, the county of the recipient's residence, or the county of the obligor's residence may cause a certified copy of any support order in the action to be transcribed and filed with the clerk of the district court of any county in this state in which the obligee or the obligor may reside from time to time. Thereafter, the provisions of this section apply as if the support order were issued by the district court of the county to which the support order is transcribed. No fee may be charged for transcribing or filing a certified copy of any support order under this section.
3. The clerk of court, at the option of the clerk, may deposit payments received by the clerk under this section in a special trust account in either the Bank of North Dakota or in a banking institution of this state designated as a depository of public funds under chapter 21-04 and make payments from the trust account to the obligee or the clerk may deposit payments received by the clerk under this section with the county treasurer and direct their disbursement under chapter 11-14.

SECTION 3. AMENDMENT. Section 14-09-09.6 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.6. Voluntary income withholding for support - Limitations. An obligor may execute a document voluntarily authorizing income withholding from current or future income due the obligor from an income payor in an amount sufficient to meet any child support obligation imposed by a court or otherwise. An income withholding authorization made under this section is binding on the income payor one week after service upon the income payor by personal service or by certified mail of a true copy of the executed income withholding authorization. The income payor shall deduct the sum or sums specified and pay them as specified by the income withholding authorization and any applicable imposition of a support obligation by a court. In addition, the income payor may deduct a fee of ~~one dollar~~ three dollars per month from the obligor's income to cover expenses involved in transmitting payment. Compliance by an income payor with an income withholding authorization issued under this section discharges the income payor's

liability to the obligor for that portion of the obligor's income. The income payor may not use the income withholding authorization as a basis for any disciplinary action against the obligor.

SECTION 4. AMENDMENT. Section 14-09-09.7 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.7. Scale of suggested minimum contributions Child support guidelines.

1. The department of human services shall establish a **scale of suggested minimum contributions** child support guidelines to assist courts in determining the amount that a parent should be expected to contribute toward the support of the child under this section. The **scale guidelines** shall:
 - a. Include consideration of gross income.
 - b. Authorize an expense deduction for determining net income.
 - c. Designate other available resources to be considered.
 - d. Specify the circumstances which should be considered in reducing support contributions on the basis of hardship.
2. The department shall accept and compile pertinent and reliable information from any available source in order to establish a **minimum scale of suggested contributions** the child support guidelines. Copies of the **scale guidelines** shall be made available to courts, state's attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this chapter.
3. **The court shall consider the scale of suggested minimum contributions in making a determination of the amount of payment for child support** There is a rebuttable presumption that the amount of child support which would result from the application of the child support guidelines is the correct amount of child support. **The presumption may be rebutted if a preponderance of the evidence in a contested matter establishes that factors not considered by the guidelines will result in an undue hardship to the obligor or a child for whom support is sought. A written finding or a specific finding on the record must be made if the court determines that the presumption has been rebutted.**
4. **The department shall review the child support guidelines periodically, as the department determines necessary, but at least once every four years, to ensure that the application of the guidelines results in the determination of appropriate child support award amounts.**

* SECTION 5. AMENDMENT. Section 14-09-09.10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 14-09-09.10 was also amended by section 9 of Senate Bill No. 2056, chapter 69.

14-09-09.10. Definitions. For the purposes of ~~section 14-09-09.3 and sections 14-09-09.10 through 14-09-09.23~~ this chapter, unless the context or subject matter otherwise requires:

1. "Child support" means payments for the support of children and combined payments for the support of children and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.
2. "Child support agency" means the county social service board, any combination of county social service boards, or any entity created by a county social service board or any combination of county social service boards, in execution of the county social service board's duties under subsection 5 of section 50-09-03.
3. "Delinquent" means a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
- 2- 4. "Disposable income" means gross income less deductions required by law for taxes and social security.
5. "Health insurance" includes fees for service, health maintenance organization, preferred provider organization, comprehensive health association plan, accident and health insurance policies, and other types of coverage under which major medical coverage may be provided in a policy or contract which may legally be sold in this state.
- 3- 6. "Income" means any form of payment, regardless of source, owed to an obligor, including, but not limited to, ~~an~~ any earned, unearned, taxable or nontaxable income, workmen's compensation, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding public assistance benefits administered under state law.
- 4- 7. "Income payor" means any person, partnership, firm, corporation, association, political subdivision, or department or agency of the state or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
- 5- 8. "Obligee" means a person including a state or political subdivision to whom a duty of support is owed.
- 6- 9. "Obligor" means any person owing a duty of support.
- 7- 10. "Public authority" means the department of human services in execution of its duties pursuant to subsection 12 of section 50-09-02.

SECTION 6. AMENDMENT. Section 14-09-09.11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.11. Income withholding order. When a judgment or order requires the payment of child support, ~~or the payment of alimony and child support,~~ it may be enforced by an income withholding order, as provided in ~~section 14-09-09.3 and sections 14-09-09.10 through 14-09-09.23~~ this chapter, in addition to any other remedies provided by law.

SECTION 7. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Immediate income withholding.

1. Except as provided in subsection 2, each judgment or order which requires the payment of child support, issued or modified on or after January 1, 1990, subjects the income of the obligor to income withholding, regardless of whether the obligor's support payments are delinquent.
2. If a party to a proceeding, who would otherwise be subject to immediate income withholding under subsection 1, demonstrates, and the court finds that there is good cause not to require immediate withholding, or if the parties, including any assignee of support rights, reach a written agreement that provides for an alternative arrangement for assuring the regular payment of child support, the court need not subject the income of the obligor to immediate withholding.

SECTION 8. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Requests by obligee for income withholding - Approval - Procedures and standards.

1. An obligee may apply to a child support agency for approval of an income withholding request. The income of the obligor becomes subject to income withholding on the date an approved request is made.
2. The public authority shall establish procedures and standards for the approval of obligee requests for income withholding. The standards established must include consideration of:
 - a. An obligor's threat to discontinue child support payments; and
 - b. An obligor's having made child support payments sufficient to avoid a delinquency, but insufficient to conform to the ordered amount.
3. Upon application of an obligee requesting income withholding, the child support agency shall promptly approve or disapprove the request. Each approved request must be transmitted promptly to the clerk of court.

SECTION 9. AMENDMENT. Section 14-09-09.12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.12. Provision of notice of impact of ~~section 14-09-09.3 and sections 14-09-09.10 through 14-09-09.23~~ income withholding law to obligors. Each judgment or order issued by a court in this state which includes an order for support of minor children must include a statement that a delinquency in payment of the support due or the approved request of the obligee will result in an income withholding order being issued in accordance with ~~section 14-09-09.3 and sections 14-09-09.10 through 14-09-09.23~~ this chapter.

SECTION 10. AMENDMENT. Section 14-09-09.13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.13. Procedure - Notice to obligor. If immediate income withholding under section 7 of this Act has not been implemented and an obligor is delinquent, or an obligee's request for income withholding is approved, the clerk of court shall serve a notice and a copy of this chapter on the obligor by first-class mail at the obligor's last known address. The notice must state:

1. That the obligor is delinquent in the payment of child support or a request for withholding has been made by the obligee and approved by a child support agency, as the case may be, and the obligor is therefore subject to an income withholding order on all income.
2. The amount of child support owed and the amount of arrearage, if any.
3. The total amount of money that will be withheld by the income payor from the obligor's income and that the amount is the sum of both of the following:
 - a. The obligor's current monthly support obligation.
 - b. The amount the obligor is ordered to pay toward any outstanding arrearage, or if no order to repay an arrearage exists, then an amount equal to twenty percent of the obligor's current support obligation, if any, or equal to the most recent monthly support obligation if there is no current support obligation, for application towards any arrearage subject to the limitations of section 14-09-09.16.
4. That the income payor may withhold an additional sum of one dollar three dollars to cover the income payor's expenses.
5. That if not contested pursuant to section 14-09-09.14, the income withholding order will be issued immediately, without further order of the court.
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this section.

SECTION 11. AMENDMENT. Section 14-09-09.14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.14. Hearing upon obligor's request.

1. If the obligor files a request for a hearing within ten days of the date of the notice made pursuant to section 14-09-09.13, the court shall hold a hearing within ten working days after the date of the request. If at the hearing the obligor establishes:

- a. In a case where withholding would be based on an alleged delinquency, that there has been a mistake in the identity of the obligor; or
- b. In a case where an approved request for withholding has been made by the obligee, that the approval of the request constituted an abuse of discretion;

the court may order that no income withholding order issue. If at the hearing the obligor establishes that there is an overstatement in the amount of support stated to be owed by the obligor, the court may amend the amount to be withheld. In the absence of a finding of a mistake of fact in a case where withholding would be based on an alleged delinquency, or in the absence of an abuse of discretion in the approval of an obligee's request for withholding, the court shall order that the income withholding order issue. Payment of overdue support after issuance of notice under section 14-09-09.13 may not be the basis for an order that no income withholding order issue.

2. An obligor is not precluded, by subsection 1, from seeking appropriate relief from a judgment or order affecting a child support obligation nor is the court precluded from granting such relief. An obligor's request for such relief, whether made by motion under rule 60(b) of the North Dakota Rules of Civil Procedure or otherwise, may not be considered during the hearing described in subsection 1.

SECTION 12. AMENDMENT. Subsections 1 and 2 of section 14-09-09.16 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. That the obligor is delinquent in the payment of support or a request for withholding has been made by the obligee and approved by the child support agency, as the case may be, and that the income payor is therefore required to withhold a stated sum from the obligor's income at the time the obligor is paid for transmittal to the clerk of court within ten days of the date the obligor is paid.
2. That the income payor may also withhold and retain an additional sum of ~~one dollar~~ three dollars from the obligor's income to cover expenses involved in transmitting payment.

SECTION 13. AMENDMENT. Section 14-09-09.17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.17. Amendment - Termination of income withholding order. Upon amendment, or termination, ~~or stay~~ of an income withholding order, the

clerk of court shall send appropriate notice to the income payor. An income withholding order is to be amended by the clerk when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order is to be terminated when the duty to support ceases and all child support arrearages have been paid. ~~An income withholding order may be stayed by the clerk of court when the location of the obligee is unknown to the clerk, preventing transmittal of the support.~~

SECTION 14. AMENDMENT. Section 14-09-09.19 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.19. Interstate income withholding - Duties of the ~~agency~~ public authority upon receipt of request from other state.

1. Upon receipt of a support order of another state with the documentation specified in subsection 2 of this section from a child support agency of another state, the public authority shall file the order and documentation with a clerk of district court of any county in which the obligor resides or derives income.
2. All of the following documentation is required for the filing of a support order of another state for issuance of an income withholding order:
 - a. A certified copy of the support order with all modifications.
 - b. A certified copy of an income withholding order, if any, in effect.
 - c. A copy of the portion of the income withholding statute of the state which issued the support order which states the requirements for obtaining income withholding under the law of that jurisdiction.
 - d. A sworn statement of the obligee or assignee of the obligee or a certified statement of the clerk of court of the arrearages, if any, the obligee's approved request for withholding, if such a request has been made and approved, a certified statement that the circumstances in the case require immediate withholding under the laws of the state filing the support order, and any assignment of support rights.
 - e. The name, address, and social security number of the obligor, if known.
 - f. The name and address of the employer or other income payor of the obligor upon whom the income withholding order is to be served.
 - g. The name and address of the agency or person to whom the payments collected by income withholding are to be transmitted.

SECTION 15. AMENDMENT. Section 14-09-09.21 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-09.21. Interstate income withholding - Hearing upon request of obligor. If the obligor files a request for hearing within ten days of the date of the notice made pursuant to section 14-09-09.20, the court shall hold a hearing within ten working days of the date of the request. At the hearing contesting the proposed income withholding order, the documentation filed with the court, pursuant to section 14-09-09.19, shall constitute prima facie proof, without further proof or foundation, that the support order is valid, that the amount of current payments and arrearages, if any, is as stated, that a request for withholding by an obligee has been made and approved, or that the circumstances of the case require immediate withholding under the laws of the state filing the support order; and that the obligee would be entitled to income withholding under the law of the state which issued the support order. If, at the hearing, the obligor establishes that there has been a mistake in the identity of the obligor or an overstatement of the amount of support stated to be owed by the obligor, that the obligee's request for withholding was not an approvable request under the laws of the approving state or that the circumstances of the case do not require immediate withholding under the laws of the state filing the support order, the court may order that no income withholding order issue. In the absence of a finding of mistake of fact, the court shall order that the income withholding order issue. Payment of overdue support after issuance of notice under section 14-09-09.20 may not be the basis for an order that no income withholding order issue. Issuance of an income withholding order does not confer jurisdiction on the courts of this state for any purpose other than issuance and enforcement of income withholding orders.

SECTION 16. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Periodic review of child support orders.

1. The public authority shall establish standards to determine that a child support order being enforced by the child support agency should be reviewed. If required to do so in order to secure approval by federal officials charged with administration of title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq., as amended], the public authority shall make those standards a part of a plan indicating how and when child support orders are to be periodically reviewed and adjusted.
2. If the child support agency determines, at the request of the obligor or the obligee, or on its own motion, that, pursuant to the standards described in subsection 1, a child support order being enforced by the child support agency should be reviewed, the child support agency shall initiate a review of such order and, if the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by child support guidelines established under subsection 1 of section 14-09-09.7, shall seek an amendment of the order. The court shall order the amendment of the child support order to conform to the amount of child support payment to that required under the child support guidelines unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted.

SECTION 17. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Periodic review of child support orders.

1. Each child support order must be reviewed by the child support agency not less than thirty-six months after the establishment of the order or the most recent review of the order unless:
 - a. In the case of an order with respect to which there is in effect an assignment under sections 50-09-06 or 50-09-06.1, subsection 2 of section 50-24.1-02, or section 50-24.1-02.1, the child support agency has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; or
 - b. In the case of any other order neither the obligor nor the obligee has requested review.
2. If, upon review, the child support agency determines that the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by the child support guidelines established under subsection 1 of section 14-09-09.7, the child support agency shall seek an amendment to the order. The court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted.

SECTION 18. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Notice of periodic review of child support orders.

1. The child support agency shall provide written notice that a child support order being enforced by the child support agency may be subject to review under section 16 or section 17 of this Act. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the child support agency, at least thirty-five days before the commencement of the review.
2. The notice to the obligor must inform the obligor of the duty to furnish the information required by section 19 of this Act and that a failure to furnish the required information may result in the entry of an order compelling the furnishing of the information. The notice must also inform the obligor that the review determination will be mailed to the obligor following the review. The notice must be accompanied by a copy of the income withholding statutes and an income report form, together with instructions for the accurate completion of the income report form.

SECTION 19. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Obligor's duties upon review - Failure to provide information.

1. The obligor shall provide information to the child support agency concerning the obligor's income, which is sufficient to accomplish

the review, no later than five working days before the date of review. The information must be furnished by:

- a. Providing an income report, in the form and manner required by the child support agency, accurately completed and attested to by the obligor;
 - b. Providing a verified copy of the latest income tax return, filed with the internal revenue service or any state official administering a state income tax, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of the review; or
 - c. Providing a written authorization by which the child support agency may secure a verified copy of the latest income tax return, filed with the tax commissioner, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of review.
2. If information concerning the obligor's income sufficient to accomplish the review has not been received by the child support agency by the fifth working day before the date of review, the child support agency shall provide to the tax commissioner an affidavit stating the obligor's name and address, that a review of the obligor's child support obligation is pending, that notice requesting income information has been given as required by law, and that the required information has not been furnished on a timely basis. Notwithstanding the provisions of section 57-38-57 or other confidentiality statutes, upon receipt of an affidavit provided for in this subsection, the tax commissioner may provide to a child support agency a verified copy of the latest income tax return, filed with the office of the commissioner, which reports the obligor's income. The information obtained by a child support agency from the tax commissioner, in accordance with this section, retains its confidentiality and may only be used by a child support agency in the pursuit of its child support collection duties and practices. The tax commissioner may require a child support agency to make assurances, satisfactory to the commissioner, that the agency has the ability to comply with this subsection.
3. If information concerning the obligor's income sufficient to accomplish the review has not been timely furnished by the obligor and is not available from the office of the tax commissioner, the child support agency may apply to the court for an order compelling the obligor to furnish information sufficient to accomplish the review.

SECTION 20. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Notice of review determination.

1. Following review, the child support agency shall promptly provide written notice of its determination on review. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the child support agency.

2. If the child support agency has made a determination that no amendment to the amount of child support should be sought, the notice must inform the obligor and the obligee of the right of each to challenge that determination by seeking an amendment to the amount of child support, from the court, at any time before the termination of the support order.
3. If the child support agency has made a determination to seek an amendment in the amount of child support, the notice must be mailed at least thirty-five days before the date of a hearing on a motion for amendment made by the child support agency under section 16 or section 17 of this Act, and must inform the obligor and the obligee of the right of each to challenge that determination by opposing that amendment before the court. The notice to the obligor must be accompanied by:
 - a. A proposed modification of the child support order to provide for payment of child support in the amount required under the child support guidelines;
 - b. A document by which the obligor may consent to the proposed modification; and
 - c. An address and telephone number which the obligor may contact to receive information from or schedule a meeting with representatives of the child support agency.

SECTION 21. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Motion for amendment of amount for child support - How made. Upon a determination by a child support agency, made under section 16 or section 17 of this Act, that it must seek amendment of a child support order, the child support agency may file and serve a motion and supporting documents.

SECTION 22. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Request for review - Notice of right to request review. An obligor or an obligee may request review under section 16 or section 17 of this Act, by applying to the child support agency for child support services, and indicating, in the manner there provided, a desire to have a child support order reviewed. Each judgment or order issued by a court in this state which includes an order for child support must include a statement advising of the right to request a review under this section.

SECTION 23. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Order.

1. Unless the obligee has comparable or better group dependent health insurance coverage available at no or nominal cost, the court shall order the obligor to name the minor child as beneficiary on any health insurance plan that is available to the obligor at no or nominal cost.

2. If the court finds that dependent health insurance is not available to the obligor or the obligee at no or nominal cost, the court may require the obligor to obtain dependent health insurance, or to be liable for reasonable and necessary medical expenses of the child.

SECTION 24. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Eligible child - Coverage to continue. A minor child that an obligor is required to cover as a beneficiary under section 23 of this Act is eligible for insurance coverage as a dependent of the obligor until the child's eighteenth birthday or until further order of the court. Insurance companies and nonprofit health service corporations licensed in this state shall continue coverage of a minor child insured under an accident and health insurance policy or health service contract while the legal custody of the minor child has been given by the court to the obligee to the same extent as the general public is covered as long as the minor child meets all the other usual qualifications for insurability and payment continues on the policy or contract premiums. A determination that legal custody will be with a parent other than a parent who pays policy or contract premiums, or on whose behalf payment of policy or contract premiums is made, may not be a basis for cancellation of the minor child's accident and health insurance policy or health service contract.

SECTION 25. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Authorization to insurer. The signature of the custodial parent of the insured dependent, the obligee, or the obligee's assignee is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of the medical services.

SECTION 26. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Application for service. The child support agency responsible for support enforcement shall take necessary steps to implement, modify, and enforce an order for dependent health insurance whenever the children receive aid to families with dependent children or foster care under chapter 50-09 or medical assistance under chapter 50-24.1, or upon application of the obligee to the child support agency and payment by the obligee of any required application fee.

SECTION 27. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Public authority to establish criteria. The public authority shall establish criteria to identify cases involving children who received aid to families with dependent children or foster care under chapter 50-09 or medical assistance under chapter 50-24.1, or where an application to the child support agency has been completed by an obligee and where there is a high potential for obtaining medical support based on:

1. Evidence that health insurance may be available to the obligor at reasonable cost; and

2. Facts that are sufficient to warrant modification of the existing court order to include health insurance coverage for a dependent child.

SECTION 28. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reasonable cost of health insurance. For purposes of this chapter, health insurance is considered reasonable in cost if it is available to the obligor on a group basis or through an employer or union, regardless of service delivery mechanism.

SECTION 29. AMENDMENT. Subsection 1 of section 14-17-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A man is presumed to be the natural father of a child if:
 - a. He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;
 - b. Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
 - (1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred days after its termination by death, annulment, declaration of invalidity, or divorce; or
 - (2) If the attempted marriage is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;
 - c. After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
 - (1) He has acknowledged his paternity of the child in writing filed with the division of vital statistics of the state department of health and consolidated laboratories;
 - (2) With his consent, he is named as the child's father on the child's birth certificate; or
 - (3) He is obligated to support the child under a written voluntary promise or by court order;
 - d. While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; ~~or~~

- e. He acknowledges his paternity of the child in a writing filed with the division of vital statistics of the state department of health and consolidated laboratories, which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the division of vital statistics of the state department of health and consolidated laboratories. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted; or
- f. If genetic tests show that he is not excluded and the statistical probability of his parentage is ninety-five percent or higher.

SECTION 30. AMENDMENT. Subsection 2 of section 14-17-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision d ~~or~~, e, or f of subsection 1 of section 14-17-04.

SECTION 31. AMENDMENT. Section 14-17-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-17-10. Blood Genetic test.

1. The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood genetic tests, including tests of blood or other tissues. The tests shall be performed by an expert qualified as an examiner of blood types genetic data or specimens, appointed by the court.
2. The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiner examiners of blood types genetic data or specimens.
3. In all cases, the court shall determine the number and qualifications of the experts.

SECTION 32. AMENDMENT. Subsection 3 of section 14-17-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Blood Genetic test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity. Verified documentation of the chain of custody of the blood genetic specimens is competent evidence to establish the chain of custody. A verified report obtained from an examiner appointed pursuant to section 14-17-10 shall be admitted at trial unless a challenge to the testing procedures or the results of blood genetic analysis has been made before trial.

SECTION 33. AMENDMENT. Subsection 3 of section 14-17-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. If a party refuses to accept a recommendation made under subsection 1 and ~~blood~~ genetic tests have not been ~~taken~~ administered, the court shall require the parties to submit to blood genetic tests, if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

SECTION 34. AMENDMENT. Section 14-17-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-17-15. Costs. The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pretrial proceedings, including blood genetic tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the county social service board of the county in which the child resides or is found.

SECTION 35. AMENDMENT. Section 50-09-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-06. Application for assistance - Assignment of support rights. Application for aid to a dependent child under this chapter must be made to the county agency in the manner and form prescribed by the state agency. The application must contain such information as the state agency may require, and the action of the state agency in approving and granting assistance or in disapproving and denying assistance shall be final and binding on the county agency. An applicant application for assistance under this chapter is deemed to have assigned create and effect an assignment of all rights of support, which exist or may come to exist for the benefit of the child, to the state agency and county agency at the time of application all rights to child support from any other person the applicant may have in his own behalf or in behalf of any other family member for whom application is made. The assignment:

1. Is effective as to both current and accrued child support obligations.
2. Takes effect upon a determination that the applicant is eligible of eligibility for assistance under this chapter.
3. Terminates when an applicant ceases to receive assistance under this chapter, except with respect to the amount of any unpaid support obligation accrued under the assignment.

SECTION 36. REPEAL. Sections 14-08-07, 14-08-08, 14-08-09, 14-08-10, and subsection 5 of section 14-17-14 of the North Dakota Century Code are hereby repealed.

SECTION 37. EFFECTIVE DATE. Sections 16 and 18 of this Act become effective on October 1, 1990, and section 17 of this Act becomes effective on October 1, 1993.

SECTION 38. EXPIRATION DATE. Section 16 of this Act is ineffective after October 1, 1993.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 149

SENATE BILL NO. 2389
(Senators Olson, Stenehjem, J. Meyer)
(Representatives Wentz, Schneider, Kelly)

MENTALLY ILL AND CHEMICALLY DEPENDENT COMMITMENT

AN ACT to create and enact a new subsection to section 11-16-01 and a new section to chapter 25-03.1 of the North Dakota Century Code, relating to duties of states attorneys in commitment proceedings and to combination of preliminary and treatment hearings; and to amend and reenact sections 25-03.1-01, 25-03.1-02, 25-03.1-04, 25-03.1-06, 25-03.1-07, 25-03.1-08, 25-03.1-09, 25-03.1-11, 25-03.1-13, 25-03.1-14, 25-03.1-17, 25-03.1-18, 25-03.1-19, 25-03.1-21, 25-03.1-22, 25-03.1-25, 25-03.1-26, 25-03.1-27, subsection 5 of section 25-03.1-30, sections 25-03.1-34, 25-03.1-42, 25-03.1-43, and 25-03.1-46, relating to civil commitment of mentally ill and chemically dependent persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 11-16-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Institute proceedings under chapter 25-03.1 if there is probable cause to believe that the subject of a petition for involuntary commitment is a person requiring treatment.

SECTION 2. AMENDMENT. Section 25-03.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-01. Legislative intent. The provisions of this chapter are intended by the legislative assembly to:

1. Provide prompt evaluation and treatment of persons with serious mental disorders; ~~alcoholism~~; or ~~drug addiction~~ chemical dependency.
2. Safeguard individual rights.
3. Provide continuity of care for persons with serious mental disorders; ~~alcoholism~~; or ~~drug addiction~~ chemical dependency.
4. Encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures.
5. Encourage, whenever appropriate, that services be provided within the community.

SECTION 3. AMENDMENT. Section 25-03.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-02. Definitions. In this chapter, unless the context or subject matter requires otherwise:

1. "Alcoholic individual" means an individual who has lost the power of self control, or who exhibits cognitive deficiencies or general confused thinking, or other manifestations of disorientation which show an inability to make judgments about areas of behavior that do not directly relate to the individual's drinking. "Chemically dependent person" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
2. "Court" means, except where otherwise indicated, the county court of the county wherein the respondent resides.
3. "Department" means the state department of health and consolidated laboratories pursuant to chapter 23-01 human services.
4. "Director" means the director of a treatment facility.
5. "Drug addict" means an individual who has a physical or emotional dependence on a drug or drugs which he uses in a manner not prescribed by a physician.
6. "Expert examiner" means a licensed physician, psychiatrist, clinical psychologist, or licensed addiction counselor appointed by the court to examine the respondent. An evaluation of a respondent's physical condition shall be made only by a licensed physician or psychiatrist, an evaluation of a respondent's mental status shall be made only by a licensed psychiatrist or clinical psychologist, and an examination by a licensed addiction counselor shall be limited to whether the respondent is an alcoholic or drug addict chemically dependent.
7. 6. "Independent expert examiner" means a licensed physician, psychiatrist, clinical psychologist, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent meets the criteria of a person requiring treatment. An examination by a licensed addiction counselor must be limited to whether the respondent is an alcoholic or drug addict, chemically dependent and whether the respondent is a person requiring treatment.
8. 7. "Magistrate" means the judge of the appropriate county or juvenile court or a judge assigned by the presiding judge of the judicial district.
9. 8. "Mental health professional" means:
 - a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.

- b. A social worker with a master's degree in social work from an accredited program.
- c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
- d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as defined by subdivision c, or an expert examiner ~~as defined by subsection 6.~~
- e. A licensed addiction counselor.

~~10-~~ 9. "Mentally ill person" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include a mentally retarded or mentally deficient person of significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior. ~~Drug addiction and alcoholism do~~ Chemical dependency does not per se constitute mental illness, although persons suffering from these conditions that condition may also be suffering from mental illness.

~~11-~~ 10. "Person requiring treatment" means ~~either a person-~~

- ~~a-~~ a. ~~Who is suffering from severe mental illness, severe alcoholism, or severe drug addiction. "Severe" means that the disease or addiction is associated with gross impairment of the person's level of adaptive functioning as outlined by axis V of the diagnostic and statistical manual of mental disorders of the American psychiatric association; or~~
- ~~b-~~ b. ~~Who who is mentally ill, an alcoholic, or drug addict chemically dependent, and there is a reasonable expectation that if the person is not hospitalized treated there exists a serious risk of harm to himself that person, others, or property. "Serious risk of harm" means a substantial likelihood of:~~
 - ~~11-~~ a. Suicide as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;
 - ~~12-~~ b. Killing or inflicting serious bodily harm on another person, or inflicting significant property damage, as manifested by acts or threats; or
 - ~~13-~~ c. Substantial deterioration in physical health, or substantial injury, disease, or death ~~resulting from~~ based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or
 - d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon acts, threats, or patterns in the person's

treatment history, current condition, and other relevant factors.

- ~~+2-~~ 11. "Private treatment facility" means any facility established ~~pursuant to under~~ chapters 10-19.1, 10-22, and 10-24 and licensed ~~pursuant to under~~ chapter 23-16 or 23-17.1.
- ~~+3-~~ 12. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.
- ~~+4-~~ 13. "Respondent" means a person subject to petition for involuntary treatment.
- ~~+5-~~ 14. "Superintendent" means the state hospital superintendent.
- ~~+6-~~ 15. "Treatment facility" or "facility" means any hospital including the state hospital at Jamestown; or evaluation and treatment facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to persons suffering from a mental disorder; ~~alcoholism~~; or ~~drug addiction~~ chemical dependency.

* SECTION 4. AMENDMENT. Section 25-03.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-04. Voluntary admission. An application for admission to the state hospital or a public treatment facility for observation, diagnosis, care, or treatment as a voluntary patient may be made by any person who is mentally ill; ~~an alcoholic; or a drug addict; chemically dependent~~ or who has symptoms of such illnesses. An application for admission as a voluntary patient may be made on behalf of a minor who is mentally ill; ~~an alcoholic; or a drug addict; chemically dependent~~ or who has symptoms of such illnesses; ~~by his the~~ minor's parent or legal guardian. The application may be submitted to a public treatment facility or to the state hospital, ~~both each~~ of which ~~shall have~~ has the authority to admit and treat the applicant. Upon admittance, the superintendent or the director shall immediately designate a physician, psychiatrist, clinical psychologist, or mental health professional to examine the patient.

SECTION 5. AMENDMENT. Section 25-03.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-06. Right to release on application - Exception - Judicial proceedings. Any person voluntarily admitted for inpatient treatment to any treatment facility or the state hospital shall be orally advised of the right to release and shall be further advised in writing of ~~his the~~ rights under this chapter. A voluntary patient who requests ~~his~~ release shall be immediately released. However, if the superintendent or the director determines that the patient is a person requiring treatment, the release may be postponed until judicial proceedings for involuntary treatment have been held in the county where the hospital or facility is located. The patient must be served the petition within twenty-four hours, exclusive of weekends and holidays, from the time release is requested, unless extended by the magistrate for good cause shown. The treatment hearing shall be held within

* NOTE: Section 25-03.1-04 was also amended by section 2 of House Bill No. 1038, chapter 335.

~~five seven days, excluding weekends and holidays,~~ from the time the petition is served.

SECTION 6. AMENDMENT. Section 25-03.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-07. Involuntary admission standards. A person may be involuntarily admitted under this chapter to the state hospital or another treatment facility only if it is determined he that the individual is a person requiring treatment ~~as defined by subsection 11 of section 25-03.1-02.~~

SECTION 7. AMENDMENT. Section 25-03.1-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-08. Application to state's attorney or retained attorney - ~~Petition for involuntary treatment - Investigation by qualified mental health professional. Proceedings for the involuntary treatment of an individual may be commenced by any~~ Any person eighteen years of age or over ~~by filing a written petition with the clerk of court shall present the information necessary for the commitment of an individual for involuntary treatment to the state's attorney of the county where the respondent is presently located, or which is the respondent's place of residence, or to an attorney retained by that person to represent the applicant throughout the proceedings. The clerk of court attorney shall assist the person in completing the petition. The petition shall must be verified by affidavit of the applicant and contain assertions that the respondent is the a person requiring the treatment; the facts, in detail, that are the basis of that assertion; the names, telephone numbers, and addresses, if known, of any witnesses to such facts; and, if known, the name, telephone number, and address of the nearest relative or guardian of the respondent, or, if none, of a friend of the respondent. The petition may be accompanied by any of the following:~~

1. A written statement supporting the petition from a psychiatrist, physician, or clinical psychologist who has personally examined the respondent within forty-five days of the date of the petition.
2. One or more supporting affidavits otherwise corroborating the petition.
- 3- ~~Corroborative information obtained and reduced to writing by the clerk of court; but only when it is not feasible to comply with, or when he considers it appropriate to supplement, the information supplied pursuant to either subsection 1 or 2-~~

In assisting the person in completing the petition, the state's attorney may direct a qualified mental health professional as designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to the state's attorney. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner conducting an examination under section 25-03.1-11. The state's attorney or retained attorney shall file the petition if the information provided by the petitioner or gathered by investigation provides

probable cause to believe that the subject of the petition is a person requiring treatment. A state's attorney who determines there are insufficient grounds for filing a petition may refer the applicant to other community resources. A state's attorney's decision not to institute proceedings may be reviewed under section 11-16-06.

SECTION 8. AMENDMENT. Section 25-03.1-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-09. Review of petition for involuntary treatment - Probable cause established - Respondent notified - Rights — ~~Investigation~~.

1. Upon the filing of a petition for involuntary treatment, the clerk of court shall immediately notify the magistrate who shall review the petition and accompanying documentation to determine whether it complies with requirements of section 25-03.1-08 and whether it establishes probable cause to believe the respondent meets the criteria of a person requiring treatment. If probable cause has not been so established, the petition ~~shall~~ must be dismissed unless an amendment would cure the defect.
2. If probable cause has been established, the magistrate shall cause to be served on the respondent and his nearest relative or guardian or, if none, a friend of the respondent, copies of the petition and supporting documentation. This ~~shall~~ must be accompanied by notice informing the respondent of the procedures required by this chapter ~~and an explanation of the intended uses and possible effects of the investigation mandated in subsection 3.~~ This notice ~~shall~~ must include notice of the respondent's right to a preliminary and a treatment hearing when in custody pursuant to under section 25-03.1-25 or, if not in custody, the right to a treatment hearing; of ~~his~~ the right to be present at the hearings; of ~~his~~ the right to have counsel prior to the hearings and any court-ordered examination; of ~~his~~ the right to an independent evaluation; and, if the respondent is indigent, of ~~his~~ the right to counsel and to an independent expert examiner, each at the expense of the county which is the respondent's place of residence. If an independent expert examiner is to be appointed, the respondent ~~shall~~ must be given an opportunity to select that examiner.
3. ~~The magistrate shall direct the city, county, or district mental health outreach worker or other qualified person to investigate and evaluate the specific facts alleged unless the respondent is in a facility. The investigation, to be completed as promptly as possible, shall include observations of and conversation with the respondent in his home or other surroundings where he can be found or desires to meet, unless he cannot be found or refuses to meet with the outreach worker. A written report of the results of the investigation shall be delivered to the magistrate. Copies of the report shall be made available upon request to the respondent, his counsel, and any expert examiner conducting an examination pursuant to section 25-03.1-11.~~

SECTION 9. AMENDMENT. Section 25-03.1-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-11. Involuntary treatment - Examination - Report. The respondent ~~shall~~ must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody pursuant to under the emergency treatment provisions of this chapter, the examination ~~shall~~ must be conducted within twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting an examination pursuant to under this section may consult with, or request participation in the examination by, any qualified mental health professional, and may include with the written examination report any findings or observations by such mental health professional. This examination report, and that of the independent examiner, if one has been requested, ~~shall must~~ be filed with the court. The report ~~shall must~~ contain:

1. Evaluations of the respondent's physical condition and mental status.
2. A conclusion as to whether the respondent meets the criteria of a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation required.
3. If the report concludes that the respondent meets the criteria of a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
4. The signature of the examiner who prepared the report.

If the expert examiner concludes that the respondent does not meet the criteria of a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes that the respondent does meet the criteria of a person requiring treatment, or makes no conclusion thereon, the court shall set a date for a preliminary hearing and shall give notice of this hearing to the persons designated in section 25-03.1-12. If the respondent is in custody, the preliminary hearing date must be within ~~seventy-two hours, exclusive of weekends and holidays, seven days~~ of the date respondent was taken into custody through emergency commitment pursuant to under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If the preliminary hearing is not required, the treatment hearing ~~shall must~~ be held within ~~seventy-two hours seven days~~ of the date the court received the expert examiner's report, not to exceed fourteen days, ~~excluding weekends and holidays~~, from the time the petition was served.

SECTION 10. A new section to chapter 25-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Combination of preliminary and treatment hearings. With the consent of the court, the parties may waive the preliminary hearing and conduct the treatment hearing within the time period set for the preliminary hearing.

SECTION 11. AMENDMENT. Section 25-03.1-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-13. Right to counsel - Indigency - Waiver.

1. Every respondent under this chapter is entitled to legal counsel.
2. Unless an appearance has been entered on behalf of the respondent, the court shall, within ~~seventy two~~ twenty-four hours, exclusive of weekends or holidays, from the time the petition was served filed, appoint counsel to represent the respondent. If an individual has been hospitalized pursuant to the emergency procedure, counsel shall be appointed within twenty four hours, exclusive of weekends or holidays, of such hospitalization.
3. If, after consultation with appointed counsel, the respondent wants to waive ~~his~~ the right to counsel or ~~his~~ the right to any of the hearings provided for under this chapter, he the respondent may do so by notifying the court in writing. ~~This~~ The notification ~~shall~~ must clearly state his the respondent's reasons for the waiver and ~~it shall~~ must also be signed by counsel.
4. If the respondent is indigent, the court shall order that appointed counsel be compensated from county funds of the county which is the respondent's place of residence in a reasonable amount based upon time and expenses.

SECTION 12. AMENDMENT. Section 25-03.1-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-14. Duty of state's attorney in court proceedings. The Unless the petitioner has retained an attorney, the state's attorney for the county in which proceedings under this chapter are initiated shall appear and represent the state in all court proceedings and hearings conducted under section 25-03.1-19. The state's attorney or an attorney retained by the petitioner need not appear at proceedings initiated by the state hospital under sections 25-03.1-23 and 25-03.1-26. The county of residence of the respondent shall bear the cost of the state's attorney in such proceeding proceedings in a reasonable amount based upon time and expenses.

SECTION 13. AMENDMENT. Section 25-03.1-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-17. Involuntary treatment - Preliminary hearing. At the preliminary hearing the magistrate shall review the medical report and the results of the outreach workers' investigation. During the hearing the petitioner and the respondent shall must be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The magistrate may receive evidence that would otherwise be inadmissible at a treatment hearing. At the conclusion of the hearing, if the court does not find probable cause to believe that the individual is a person requiring treatment, the petition shall must be dismissed. The person shall must be ordered discharged from the hospital or treatment facility if that person has been detained prior to before the hearing. If the court finds probable cause to believe that the respondent is a person requiring treatment, it must consider less restrictive alternatives to involuntary detention and treatment. The court may then order respondent to undergo up to fourteen days treatment under a less restrictive alternative or, if it finds that such alternatives are not in the best interests of the respondent or others, it shall order the respondent

detained for up to fourteen days for involuntary treatment in a treatment facility.

The court shall specifically state to the respondent, and give him written notice, that if involuntary treatment beyond the fourteen-day period is to be sought, the respondent will have the right to a full treatment hearing as required by this chapter.

SECTION 14. AMENDMENT. Section 25-03.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-18. Involuntary treatment - Release. The superintendent or the director may release a patient subject to a fourteen-day evaluation and treatment order or a seventy-two-hour seven-day emergency order if, in his the superintendent's or director's opinion, the respondent does not meet the criteria of a person requiring treatment or, prior to before the expiration of the fourteen-day order, the respondent no longer requires inpatient treatment. The court shall must be notified of the release and the reasons therefor. If the respondent is released because he the respondent does not meet the criteria of a person requiring treatment, the court shall dismiss the petition.

SECTION 15. AMENDMENT. Section 25-03.1-19 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-19. Involuntary treatment hearing. The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, shall must be held within fourteen days of the preliminary hearing. If the preliminary hearing is not required, the involuntary treatment hearing shall must be held within seventy-two hours seven days of the date the court received the expert examiner's report, not to exceed fourteen days, excluding weekends and holidays, from the time the petition was served. The court may extend the time for hearing for good cause. The respondent has the right to an examination by an independent expert examiner if so requested. If the respondent is indigent, the county of residence of the respondent shall pay for the cost of the examination and the respondent may choose an independent expert examiner.

The hearing shall must be held in the county of the respondent's residence or location, or the county wherein where the state hospital or treatment facility treating the respondent is located. At the hearing, evidence in support of the petition shall must be presented by the state's attorney, private counsel, or counsel designated by the court. During the hearing, the petitioner and the respondent shall must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person. All persons not necessary for the conduct of the proceeding shall must be excluded, except that the court may admit persons having a legitimate interest in the proceeding. The hearing shall must be conducted in as informal a manner as practical, but the issue shall must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure shall be are available to the respondent. The court shall receive all relevant and material evidence which may be offered as governed by the North Dakota Rules of Evidence. There shall be is a presumption in favor of the respondent, and the burden of proof in support of the petition shall be is upon the petitioner.

If, upon completion of the hearing, the court finds that the petition has not been sustained by clear and convincing evidence, it shall deny the petition, terminate the proceeding, and order that the respondent be discharged if he the respondent has been hospitalized prior to before the hearing.

SECTION 16. AMENDMENT. Section 25-03.1-21 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-21. Involuntary treatment order - Alternatives to hospitalization - Noncompliance with alternative treatment order - Emergency detention by certain professionals - Application for continuing treatment order.

1. Before making its decision in an involuntary treatment hearing, the court shall review a report assessing the availability and appropriateness for the respondent of treatment programs other than hospitalization which has been prepared and submitted by the state hospital or treatment facility. If the court finds that a treatment program other than hospitalization is adequate to meet the respondent's treatment needs and is sufficient to prevent harm or injuries which the individual may inflict upon himself or others, the court shall order the respondent to receive whatever treatment other than hospitalization is appropriate for a period of ninety days.
2. ~~If, during this period, the court or the county court of a different county in which the respondent is presently located learns that the respondent is not complying with the alternative treatment order, or that the alternative treatment has not been sufficient to prevent harm or injuries that the individual may be inflicting upon himself or others, the court may without a hearing, or the county court of a different county in which the respondent is presently located may with a hearing, and based the department, a representative of the treatment program involved in the alternative treatment order, the petitioner's retained attorney, or the state's attorney may apply to the court or to the county court of the different county in which the respondent is located to modify the alternative treatment order. The court shall hold a hearing within seven days after the application is filed. Based upon the record evidence presented at hearing and other available information, the court may:~~
 - ~~1- a. Continue the alternative treatment order;~~
 - b. Consider other alternatives to hospitalization, modify the court's original order, and direct the individual to undergo another program of alternative treatment for the remainder of the ninety-day period; or
 - ~~2- c. Enter a new order directing that the individual be hospitalized until discharged from the hospital pursuant to under section 25-03.1-30. If the individual refuses to comply with this hospitalization order, the court or the county court of a different county in which the respondent is presently located may direct a peace officer to take the individual into~~

protective custody and transport him the respondent to a treatment facility.

If the respondent does not comply with the individualized treatment plan contained in an order for alternative treatment, the department of human services or the physician who cares for the respondent may petition the court or the county court of a different county in which the respondent is presently located to direct the respondent to comply with the individualized treatment plan. The court that is petitioned shall set a hearing date which must be within one hundred twenty hours, excluding weekends and holidays, of the date the court received the petition. If at the hearing the court determines the respondent is not complying with the order, the court may direct the respondent to comply with the treatment plan or other appropriate treatment, including another program of alternative treatment or hospitalization for the remainder of the ninety-day period.

3. If a peace officer, physician, psychiatrist, clinical psychologist, or any mental health professional reasonably believes that the respondent is not complying with the individualized treatment plan contained in an order for alternative treatment or that the alternative treatment is not sufficient to prevent harm or injuries to the respondent or others, and that ~~consideration~~ considerations of time and safety do not allow intervention by a court, the designated ~~mental health~~ professional may cause the respondent to be taken into custody and detained at a treatment facility as provided in subsection 3 of section 25-03.1-25 and, within twenty-four hours, shall file a notice with the court stating the circumstances and factors of the case. The state hospital or public treatment facility must immediately accept, and a private treatment facility may accept, the respondent on a provisional basis. The superintendent or director shall require an immediate examination of the respondent and, within twenty-four hours after admission, shall either release the respondent subject to the conditions of the original order or file a notice with the court stating in detail the circumstances and factors of the case. The court shall, within forty-eight hours of receipt of the notice of the superintendent or director, after a hearing and based on the record evidence presented and other available information:

- ~~1-~~ a. Release the individual from hospitalization and continue the alternative treatment order;
 - b. Consider other alternatives to hospitalization, modify its original order, and direct the individual to undergo another program of alternative treatment for the remainder of the commitment period; or
 - ~~2-~~ c. Enter a new order directing that the respondent remain hospitalized until discharged from the hospital pursuant to under section 25-03.1-30.
4. If, at the date of expiration of an order of alternative treatment, it is believed that an individual continues to require treatment, a petition for a determination that the individual continues to be a person requiring treatment may be filed with the court where the individual is located.

SECTION 17. AMENDMENT. Section 25-03.1-22 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-22. Involuntary treatment orders.

1. An initial order for involuntary treatment ~~shall~~ must be for a period not to exceed ninety days.
2. If, prior to ~~before~~ the expiration of the ninety-day order, the director or superintendent believes that a patient's condition is such that ~~he the~~ the patient continues to require treatment, the director or superintendent shall, not less than fourteen days ~~prior to~~ before the expiration of the order, petition the court where the facility is located for a determination that the patient continues to be a person requiring treatment and for an order of continuing treatment, which order may be for an unspecified period of time. ~~If the patient has been hospitalized for the treatment of alcoholism, the continuing treatment order may be only for thirty days after which time the patient must be released.~~

SECTION 18. AMENDMENT. Section 25-03.1-25 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-25. Detention or hospitalization - Emergency procedure.

1. When a peace officer, physician, psychiatrist, clinical psychologist, or ~~any~~ mental health professional has reasonable cause to believe that a person is suffering from mental illness, alcoholism, or drug addiction ~~an individual is a person requiring treatment~~ and there exists a serious risk of harm to that person, other persons, or property of such an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician, psychiatrist, clinical psychologist, or mental health professional may cause the person to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26.
2. If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the judge magistrate, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is seriously mentally impaired, an alcoholic, or a drug addict a person requiring treatment and there exists a serious risk of harm to the respondent, other persons, or property if allowed to remain at liberty, the judge magistrate may enter a written order directing that the respondent be taken into immediate custody and be detained as provided in subsection 3 until the preliminary hearing, which ~~shall~~ must be held no more than ~~seventy-two hours, exclusive of weekends and holidays,~~ seven days after the date of the order.
3. Detention under this section may be:
 - a. In a treatment facility where the director or superintendent shall be informed of the reasons why immediate custody has been

ordered. The facility may provide treatment ~~which~~ that is necessary to preserve the respondent's life, or to appropriately control behavior by the respondent which is likely to result in physical injury to himself or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or

- b. In a public or private facility in the community which is suitably equipped and staffed for the purpose. Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secure facility is accessible, and then only for a period of not more than twenty-four hours and under close supervision.
4. Immediately upon being taken into custody, the person ~~shall~~ must be advised of the purpose of custody, of the intended uses and possible effects of any evaluation that the person undergoes, and of the person's right to counsel and to a preliminary hearing.
5. Upon arrival at a facility the peace officer, physician, psychiatrist, clinical psychologist, or ~~the~~ mental health professional who conveyed the person, or who caused the person to be conveyed, shall complete an application for evaluation and shall deliver a detailed written report from the peace officer, physician, psychiatrist, clinical psychologist, or the mental health professional who caused the person to be conveyed. The written report ~~shall~~ must state the circumstances under which the person was taken into custody. The report must allege in detail the overt act which that constituted the basis for the belief that the person is mentally ill, an alcoholic, or drug addict individual is a person requiring treatment and that, because of such condition, there exists a serious risk of harm to that person, another person, or property if the person is not immediately detained.

* SECTION 19. AMENDMENT. Section 25-03.1-26 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-26. Emergency procedure - Acceptance of petition and individual - Notice - Court hearing set.

1. The state hospital or public treatment facility must immediately accept and a private treatment facility may accept on a provisional basis the application and the person admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, within twenty-four hours after admission, shall either release the person if ~~he~~ the superintendent or director finds that the subject does not meet the emergency commitment standards, or file a petition if one has not been filed with the magistrate of the county court of the person's residence, or to the county of the court which directed immediate custody under subsection 2 of section 25-03.1-25, giving notice to the court and stating in detail the circumstances and facts of the case.

* NOTE: Section 25-03.1-26 was also amended by section 19 of Senate Bill No. 2056, chapter 69.

2. Upon receipt of the petition and notice of the emergency detention, the magistrate shall set a date for a preliminary hearing to be held no later than ~~seventy-two hours, exclusive of weekends or holidays,~~ seven days after detention unless the person has been released as a person not requiring treatment, has voluntarily admitted himself for treatment, has requested or agreed to a continuance, or unless extended by the magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

SECTION 20. AMENDMENT. Section 25-03.1-27 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-27. Notice and statement of rights.

1. Whenever any person is detained for emergency evaluation and treatment ~~pursuant to~~ under this chapter, the superintendent or director shall cause both the patient and, if possible, a responsible member of ~~his~~ the patient's immediate family, a guardian, or a friend, if any, to receive:
 - a. A copy of the petition which asserted that the individual is a person requiring treatment.
 - b. A written statement explaining that the individual will be examined by an expert examiner within twenty-four hours of ~~his~~ hospitalization, excluding ~~Sundays and~~ holidays.
 - c. A written statement in simple terms explaining the rights of the individual to a preliminary hearing, to be present at the hearing, and to be represented by legal counsel, if ~~he~~ the individual is certified by an expert examiner or examiners as a person requiring treatment.
 - d. A written statement in simple terms explaining the rights of the individual to a full court treatment hearing, to be present at the hearing, to be represented by legal counsel, and the right to an independent medical evaluation.
2. If the individual is unable to read or understand the written materials, every reasonable effort shall be made to explain them to ~~him~~ in a language ~~he~~ the individual understands, and a note of the explanation and by whom made ~~shall~~ must be entered into ~~his~~ the patient record.

SECTION 21. AMENDMENT. Subsection 5 of section 25-03.1-30 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. If, upon the discharge of a hospitalized patient, or the termination of alternative treatment of an individual ~~pursuant to~~ under this chapter, it is determined that the individual would benefit from the receipt of further treatment, the hospital or provider of alternative treatment shall offer ~~him~~ appropriate treatment on a voluntary basis, or shall aid ~~him~~ the individual to obtain treatment from another source on a voluntary basis. With

the individual's consent, the superintendent or director shall notify the appropriate community agencies or persons, or both, of ~~his~~ the release and of the suggested release plan. Community agencies include regional mental health centers, state and local counseling services, public and private associations whose function is to assist ~~the~~ the mentally ill, ~~alcoholic,~~ or ~~drug addict~~ chemically dependent persons, and the individual's physician. The agencies and persons notified of the individual's release shall report to the state hospital that initial contact with the individual has been accomplished.

SECTION 22. AMENDMENT. Section 25-03.1-34 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-34. Transfer of patients.

1. The superintendent or director of a treatment facility may transfer, or authorize the transfer of, an involuntary patient from one hospital to another hospital or facility if the superintendent or director determines that it would be consistent with the medical needs of the patient to do so. In all such transfers, due consideration shall be given to the relationship of the patient to ~~his~~ family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the patient. Whenever any public or private institution licensed by any state for the care and treatment of ~~the~~ the mentally ill or chemically dependent persons shall by agreement with a parent, a brother, a sister, a child of legal age, or guardian of any patient accept ~~such~~ the patient for treatment, the superintendent or director of the treatment facility shall release the patient to ~~said~~ the institution.
2. Upon receipt of notice from an agency of the United States that facilities are available for the care or treatment of any individual ~~heretofore~~ ordered hospitalized pursuant to under law in any hospital for care or treatment of ~~the~~ the mentally ill or chemically dependent persons and ~~such~~ the individual is eligible for care or treatment in a hospital or institution of such agency, the superintendent or director of the treatment facility may cause ~~his~~ the individual's transfer to such agency of the United States for hospitalization. No person ~~shall~~ may be transferred to any agency of the United States if ~~he~~ be the person is confined pursuant to conviction of any felony or misdemeanor or ~~if he~~ the person has been acquitted of the charge solely on the ground of mental illness unless prior to transfer the court originally ordering confinement of ~~such the~~ person enters an order for such transfer after appropriate motion and hearing. Any person transferred as provided in under this section to an agency of the United States ~~shall be~~ is deemed to be hospitalized by such agency pursuant to the original order of hospitalization.
3. No patient ~~shall~~ may be transferred to another hospital or agency without first notifying the patient and the patient's legal guardian, spouse, or next of kin, if known, or a chosen friend of the patient and the court ordering hospitalization. The patient ~~shall~~ must be given an opportunity to protest the transfer and to

receive a hearing on the ~~merits of his~~ protest. The patient's objection to the transfer must be presented to the court where the facility is located or to a representative of the hospital or facility within five seven days, ~~excluding weekends and holidays~~, after the notice of transfer was received. If the objection is presented to a representative of the hospital or facility, ~~he the~~ representative shall transmit it to the court forthwith. The court shall set a hearing date which shall be within fourteen days of the date of receipt of the objection. If an objection has not been filed or the patient consents to a transfer, the court may enter an ex parte order authorizing transfer.

SECTION 23. AMENDMENT. Section 25-03.1-42 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-42. Limitation of liability - Penalty for false petition.

1. A person acting in good faith upon either actual knowledge or reliable information who makes the petition for hospitalization of another person under this chapter is not subject to civil or criminal liability.
2. A physician, psychiatrist, clinical psychologist, mental health professional, employee of a treatment facility, state's attorney, or peace officer who in good faith exercises ~~his~~ professional judgment in fulfilling an obligation or discretionary responsibility under this chapter is not subject to civil or criminal liability for his act acting unless it can be shown that it was done in a negligent manner.
3. A person who makes a petition for hospitalization of another person without having good cause to believe that the other person is suffering from a mental illness, ~~alcoholism~~, or ~~drug addiction~~ chemical dependency and as a result is likely to cause serious harm to himself or others, is guilty of a class A misdemeanor.

SECTION 24. AMENDMENT. Section 25-03.1-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-43. Confidential records. All information and records obtained in the course of an investigation, evaluation, examination, or treatment under this chapter and the presence or past presence of a patient in a treatment facility shall be kept confidential and not as public records, except as the requirements of a hearing under this chapter may necessitate a different procedure. All information and records ~~shall be~~ are available to the court and ~~shall be disclosed~~, under regulations established by the ~~state~~ department of ~~health~~, may be disclosed only to:

1. Physicians and providers of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient to whom the patient has given written consent to have information disclosed.
2. Individuals to whom the patient has given written consent to have information disclosed.

3. Persons legally representing the patient, upon proper proof of representation and unless the patient specifically withholds consent.
4. Persons authorized by a court order.
5. Persons doing research or maintaining health statistics, if the anonymity of the patient is assured, ~~his~~ the patient's consent is given, and the facility recognizes the project as a bona fide research or statistical undertaking.
6. The director of institutions in cases in which prisoners sentenced to the state prison are patients in the state hospital on authorized transfers either by voluntary admissions or by court order.
7. Governmental or law enforcement agencies when necessary to secure the return of a patient who is absent without authorization from the facility where the patient was undergoing evaluation or treatment.

SECTION 25. AMENDMENT. Section 25-03.1-46 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-46. Rules and regulations - Preparation of forms. The department shall, ~~in accordance with~~ under chapter 28-32, ~~make, promulgate, adopt and enforce such rules and regulations~~ as may be necessary for the implementation of this chapter. ~~The department shall be~~ supreme court, in consultation with the department, the associations of county judges and state's attorneys, and other affected organizations, is responsible for the preparation and ~~the department is~~ responsible for distribution of the necessary and appropriate forms to enable compliance with this chapter.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 150

SENATE BILL NO. 2382
(J. Meyer)

INDIGENT CIVIL LEGAL SERVICES FUND

AN ACT to provide for an indigent civil legal services fund; to amend and reenact section 11-17-04 of the North Dakota Century Code, relating to court filing fees and fees to fund civil legal services for indigent persons; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-17-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-17-04. Fees to be charged by the clerk of the district court and county court. The clerk of the district court and county court shall charge and collect the following fees in civil cases:

1. For filing a case for decision in district court or county court which is not a small claims action, twenty dollars.
2. For filing a small claims action in county court, ten dollars.
3. For filing any matter authorized to be filed in the office of the clerk of court other than a case for decision in subsections 1 and 2, five dollars.
4. For preparing, certifying, issuing, or transmitting any document, five dollars; or such lesser fee as may be set by a schedule to be promulgated by the state court administrator.

In addition to the fee required under subsection 1, the clerk of court shall charge and collect a fee of ten dollars. This fee must be deposited with the county treasurer as provided under sections 11-17-05 and 27-07.1-12 and thereafter must be deposited with the state treasurer and credited to an indigent civil legal services fund in the state treasury. Section 27-01-07 applies to fees charged under this section. The clerk of court may not charge or collect any fee, prescribed by this or any other section, from the county, or agencies thereof, in which the office of the clerk of court is located nor may the clerk of court charge or collect the additional ten dollar fee prescribed by this section from the state or an agency thereof or from a political subdivision or agency thereof.

SECTION 2. Indigent civil legal services fund - Distribution. An advisory committee consisting of the lieutenant governor, the attorney general or the attorney general's designee, and the state court administrator shall distribute moneys deposited in the indigent civil legal services fund. Qualified legal service programs may apply for moneys in the fund. The moneys in the fund must be distributed to legal service programs operating in

the state which provide, with funds appropriated by the federal legal services corporation, legal services to persons unable to afford private counsel. Allocation of funds among the programs must be based on the population served by each program, the range of legal services offered, alternative sources of funding, and other factors deemed relevant by the advisory committee.

SECTION 3. Advisory committee and recipients of funds to maintain books and records. The advisory committee and each recipient of funds from the indigent civil legal services fund shall maintain records in accord with the generally accepted accounting principles. The records must account for the receipt and expenditure of all funds distributed and received and must be maintained for a period of five years from the close of the fiscal year in which the funds are distributed or received or until audited, whichever is sooner.

SECTION 4. CONTINUING APPROPRIATION. The moneys deposited in the indigent civil legal services fund in the state treasury are hereby appropriated to the advisory committee on a continuing basis for the purpose of implementing and administering a program to provide civil legal assistance to indigent individuals.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 151

SENATE BILL NO. 2079
(Senator Yockim)
(Representatives Gerhardt, Nelson)

OIL AND GAS INSTRUMENT RECORDING FEES

AN ACT to amend and reenact subsection 1 of section 11-18-05 of the North Dakota Century Code, relating to fees for recording instruments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 11-18-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. For recording an instrument affecting title to real estate:
 - a. Deeds, mortgages, and all other instruments not specifically provided for in this subsection, five dollars for the first page and two dollars for each additional page.
 - (1) "Page" means one side of a single legal size sheet of paper not exceeding eight and one-half inches [21.59 centimeters] in width and fourteen inches [35.56 centimeters] in length.
 - (2) The printed, written, or typed words must be considered legible by the register of deeds before the page will be accepted for recording.
 - (3) Each real estate instrument must have a legal description considered to be adequate by the register of deeds before such instrument will be accepted for recording.
 - (4) A space of at least four inches by three and one-half inches [10.16 by 8.89 centimeters] square must be provided on the front side of each instrument for register of deeds' recording information. If recording information can only be placed on the reverse side of an instrument, an additional page charge must be levied.
 - b. Instruments satisfying, releasing, assigning, subordinating, continuing, amending, or extending more than one instrument previously recorded in the county in which recording is requested, five dollars for the first page and two dollars for each additional page plus three dollars for each such additional instrument containing a different legal description.
 - c. Plats, irregular tracts, or annexations, five dollars for one lot plus ten cents for each additional lot.
 - d. ~~Oil, gas, and mineral leases, six dollars per page.~~

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 152

HOUSE BILL NO. 1272
(Ulmer)

PUBLIC ADMINISTRATORS

AN ACT to amend and reenact section 11-21-01 of the North Dakota Century Code, relating to the office of public administrators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-21-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-21-01. Public administrator - Appointment - Term of office. ~~The county judge may appoint a public administrator for the county. The county court of each county may appoint a public administrator. A public administrator may be a corporation.~~ The initial appointments under this section may be made upon completion of the terms of public administrators elected in 1984. The public administrator shall hold office for four years and until a successor is appointed and qualified. Two or more county courts may appoint a single public administrator to serve their respective counties.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 153

SENATE BILL NO. 2136
(Committee on Political Subdivisions)
(At the request of the State Auditor)

COUNTY BUDGETS AND APPROPRIATIONS

AN ACT to amend and reenact sections 11-23-01 and 11-23-06 of the North Dakota Century Code, relating to county budgets and appropriations; and to repeal section 11-23-08 of the North Dakota Century Code, relating to county expenditures made before the appropriation is approved.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 11-23-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-23-01. Officers required to furnish commissioners with departmental budget. Every officer in charge of any institution, office, or undertaking supported wholly or in part by the county shall file with the board of county commissioners on or before July sixth of each year, on suitable blanks a departmental budget that is prescribed by the state tax commissioner and furnished by the board, auditor. The departmental budget must include an itemized statement of the amounts of moneys which, in the opinion of such officer, estimated amount of money that will be required for the proper maintenance, extension operation, or improvement of such the institution, office, or undertaking for the fiscal ensuing year next ensuing. The statement shall explain any difference between the amount of an estimate and the latest appropriation for the same purpose and it shall cite the laws relating thereto. The board or officer having charge of any poor relief which is supported wholly or in part by the county in like manner shall furnish the board of county commissioners with statements of the estimated amounts required from the county for poor relief during the ensuing fiscal year. The board of county commissioners, on or before June first of each year, shall furnish suitable blanks to each officer or person required to make such statement. The board of county commissioners may require additional information to clarify the departmental budget.

SECTION 2. AMENDMENT. Section 11-23-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-23-06. Expenditure cannot be made in excess of appropriation. No county expenditure shall be made or liability incurred, nor shall a bill be paid for any purpose, in excess of the appropriation ~~therefor~~, except as provided in sections section 11-23-07 and 11-23-08.

SECTION 3. REPEAL. Section 11-23-08 of the North Dakota Century Code is hereby repealed.

Approved March 22, 1989
Filed March 23, 1989

* NOTE: Section 11-23-01 was also amended by section 7 of Senate Bill No. 2229, chapter 142.

CHAPTER 154

HOUSE BILL NO. 1651
(Representatives Laughlin, Flaagan, Shide)
(Senators Vosper, Wogsland)

AMBULANCE SERVICE LEVIES

AN ACT to amend and reenact sections 11-28.3-04, 11-28.3-13, and 57-15-50 of the North Dakota Century Code, relating to the vote requirements for establishment or dissolution of a rural ambulance service district and the levy for county ambulance service within districts which otherwise levy for ambulance service; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-28.3-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28.3-04. Form of ballot - Vote required to approve. The ballot on the question of forming a rural ambulance service district shall be in substantially the following form:

Shall (name of taxing district or districts) levy a tax of not to exceed ----- mills for the purpose of forming a rural ambulance district?

Yes ☐

No ☐

If ~~sixty percent~~ a majority of all the votes cast on the question of levying a tax and forming a rural ambulance service district are in favor of such a tax levy, then the formation of the district shall be approved.

SECTION 2. AMENDMENT. Section 11-28.3-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

11-28.3-13. Boundaries of rural ambulance service district - Dissolution of the district. The boundaries of any rural ambulance service district organized under the provisions of this chapter may be changed in the manner prescribed by sections 11-28.3-01 through 11-28.3-06, but a change in the boundary of a district shall not impair or affect its organization or its right in or to property; nor shall it impair, affect, or discharge any contract, obligation, lien, or charge for or upon which it might be liable had such change of boundaries not been made. When a boundary change is requested, the petition, notice of election, and ballot shall all indicate that the purpose of the election is to alter the boundaries of an existing rural ambulance service district. The petition and notice of election shall

describe with particularity both the present and the proposed boundaries of the district.

Dissolution of a rural ambulance service district may be accomplished in the manner prescribed by sections 11-28.3-01 through 11-28.3-04. The petition and notice of election shall state that the purpose of the election is to dissolve the rural ambulance service district and shall describe its boundaries. The ballot to dissolve a rural ambulance service district shall be in substantially the following form:

Shall (name of taxing district or districts) cease to levy a tax for the purpose of maintaining a rural ambulance service district, and shall such district be dissolved?

Yes ☐

No ☐

If ~~sixty percent~~ a majority of all votes cast on the question are in favor of dissolution, then the district shall be dissolved thirty days after the canvass of the votes. After all debts and obligations of the district are paid, any remaining funds shall be deposited in the general fund of the county in which the district was contained. If the dissolved district was located in more than one county, then any funds remaining after all debts and obligations are paid shall be divided among those counties in the same proportion as the geographical area of the district in each county bears to the total geographical area of the dissolved district.

SECTION 3. AMENDMENT. Section 57-15-50 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-50. Levy authorized for county ambulance service. Upon petition of ten percent of the number of qualified electors of the county voting in the last election for governor or upon its own motion, the board of county commissioners of each county shall levy annually a tax not exceeding the limitation in subsection 23 of section 57-15-06.7, for the purpose of subsidizing county ambulance services; provided, that this tax shall be approved by a majority of the qualified electors of the county voting at a regular or special countywide election. The county may budget, in addition to its annual operating budget for subsidizing ambulance service, no more than ten percent of its annual operating budget as a depreciation expense to be set aside in a dedicated ambulance sinking fund deposited with the treasurer for the replacement of equipment and ambulances. The ten percent ambulance sinking fund shall be in addition to the annual operating budget for subsidization, but the total of the annual operating budget and the annual ten percent ambulance sinking fund shall not exceed the approved mill levy. If the county contains a rural ambulance service district or rural fire protection district that levies for and provides ambulance service, the property within that district is exempt from the county tax levy under this section upon notice from the governing body of the district to the board of county commissioners of the existence of the district.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 29, 1989
Filed March 30, 1989

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 155

HOUSE BILL NO. 1496
(Representatives Clayburgh, Lindgren, Graba)
(Senators Mutch, Dotzenrod)

ADULT JAIL SERVICE CONTRACTS

AN ACT to amend and reenact section 12-44.1-02 of the North Dakota Century Code, relating to the abilities of cities and counties to contract with private entities to provide adult jail services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-02. Establishing jails - Jail contracts - Regional corrections centers. For the confinement of lawfully committed persons, the governing body of a county or city shall do or shall participate in the doing of, one of the following:

1. Establishing and maintaining a jail at county or city expense.
2. Contracting for jail services and use of jail facilities with another county or city maintaining a jail, with a regional corrections center, or with the state or federal government.
3. Establishing and maintaining, pursuant to chapter 54-40 and this chapter, a regional corrections center in conjunction with other counties and cities.

A county or city may additionally contract with a county or city of another state for the confinement of lawfully committed county or city inmates from that state in a North Dakota jail or juvenile detention center, or for the confinement of lawfully committed North Dakota inmates in a county or city facility of such other state. A city or county may contract for adult jail services and juvenile detention services with a privately operated jail facility or juvenile detention center. Contracts with private agencies providing adult jail or juvenile detention services may be entered into for up to seven years.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 156

SENATE BILL NO. 2212
(Committee on Judiciary)

(At the request of the Director of Institutions)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

AN ACT to create and enact a new chapter to title 54 of the North Dakota Century Code, relating to establishing a department of corrections and rehabilitation within the office of the director of institutions; to amend and reenact sections 12-44.1-04, 12-44.1-06, 12-44.1-22, 12-44.1-23, 12-44.1-24, 12-44.1-25, 12-44.1-26, 12-44.1-27, 12-46-03, 12-46-04, 12-46-06, 12-46-09, 12-46-10, 12-46-10.1, 12-46-17, 12-46-18, 12-47-06, 12-47-08, 12-47-11, 12-47-12, 12-47-13, 12-47-15, 12-47-18, 12-47-32, 12-47-34, 12-48-02, 12-48-03, 12-48-03.1, 12-48-03.2, 12-48-06.1, 12-48-07, 12-48-14, 12-48-15, 12-48-22, 12-48.1-01, 12-48.1-02, 12-51-02, 12-51-04, 12-51-05, 12-51-06, 12-51-09, 12-52-01, 12-52-02, 12-52-03, 12-52-04, 12-52-05, 12-52-07, 12-55-07, 54-23-01, 54-23-02, 54-23-22, and 54-23-26 of the North Dakota Century Code, relating to giving authority for the state's corrections agencies to the director of the department of corrections and rehabilitation; and to repeal sections 12-47-33, 12-48-04, 12-48-05, 12-55-06, 54-21-13, 54-23-19, 54-23-20, 54-23-23, 54-23-27, and 54-23-28 of the North Dakota Century Code, relating to parole and probation and to the authority and various requirements of the director of institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-04. Administration - Organization - Management. The governing body of each jail shall:

1. Formulate an operations manual, available to all jail staff, which delineates the written policies and procedures for operating and maintaining the jail.
2. Review and update all policies and procedures in the operations manual at least annually.
3. Specify a single jail administrator in the operations manual to whom all jail staff are responsible. The operations manual shall include the jail administrator's duties, responsibilities, and authority for the management of the jail staff, inmates, programs, and physical plant.
4. Ensure that all full-time jail staff who work in direct and continuing contact with inmates receive jail management training as determined and funded by the criminal justice training and statistics division of the attorney general's office department of

corrections or such other training as approved by the ~~criminal justice training and statistics division~~ department of corrections.

SECTION 2. AMENDMENT. Section 12-44.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-06. Grades of jail facilities. The ~~attorney general~~ department of corrections shall, following inspection pursuant to section 12-44.1-24, grade jails as to length of allowable inmate confinement based upon construction, size, and usage, as follows:

1. "Grade one" means a jail for confining inmates not more than one year.
2. "Grade two" means a jail for confining inmates not more than ninety days.
3. "Grade three" means a jail for confining inmates not more than ninety-six hours.

SECTION 3. AMENDMENT. Section 12-44.1-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-22. Jail register - Contents. Each jail administrator shall be responsible for a jail register in which shall be entered such inmate information on such forms as the ~~attorney general~~ department of corrections shall prescribe by rule.

SECTION 4. AMENDMENT. Section 12-44.1-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-23. Jail report. Each jail administrator shall make and file a quarterly report from the jail register with the ~~attorney general~~ department of corrections. The ~~attorney general~~ department of corrections shall consolidate the jail reports for public release.

SECTION 5. AMENDMENT. Section 12-44.1-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-24. Jail standards - Inspections. The ~~attorney general~~ department of corrections shall:

1. Prescribe rules and regulations pursuant to chapter 28-32 establishing minimum standards for the construction, operation, and maintenance of public or private juvenile detention centers, county and city jails, and regional corrections centers.
2. Prescribe rules for the care and treatment of inmates.
3. Cause rules and regulations to be made available to inmates or be posted in at least one conspicuous place in each jail, juvenile detention center, or regional corrections center and in each cell or cellblock where they may be read by inmates.
4. Appoint a jail inspector qualified by special experience, education, or training to inspect each jail, juvenile detention center, and regional corrections center at least once each year to

determine if the rules and regulations have been complied with. Inspection shall include, but not be limited to, health and safety, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined, and personnel training.

SECTION 6. AMENDMENT. Section 12-44.1-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-25. Inspection report - Notice of noncompliance - Hearing.

1. A written report of each inspection pursuant to section 12-44.1-24 shall be made by the jail inspector within thirty days following each inspection.
2. Copies of the report shall be sent by the jail inspector to the governing body responsible for the jail, juvenile detention center, or regional corrections center and shall also be submitted to the attorney general department of corrections for review.
3. The inspection report shall specify those respects in which a jail, juvenile detention center, or regional corrections center does or does not comply with the required minimum standards and rules. The inspection report of noncompliance shall specify the time limits within which such standards or rules are to be met, with consideration being given to the magnitude or seriousness of the deficiencies and their potential effects on the health and safety of inmates, the cost of correction, and other information deemed relevant by the attorney general department of corrections.
4. Where the nature and extent of deficiencies are such that an immediate order of full or partial closure is deemed necessary by the attorney general department of corrections to preserve the health and safety of inmates, the period of time for correction may be dispensed with and an order of immediate full or partial closure may be issued by the attorney general department of corrections.
5. Within thirty days after receipt of a notice or order of immediate closure, the governing body of a jail, juvenile detention center, or regional corrections center may request a review of the determination by the attorney general department of corrections pursuant to chapter 28-32. The review shall be heard not more than forty-five days following the request, unless the period is extended by the attorney general department of corrections.

SECTION 7. AMENDMENT. Section 12-44.1-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-26. Jail variances.

1. All jails, juvenile detention centers, and regional corrections centers shall comply with the requirements of the rules and regulations promulgated by the attorney general department of corrections unless a variance has been granted by the attorney general department of corrections. Any request for a variance must be in writing and must cite the rule in question, the reasons for requesting the variance, the period of time for the variance, and

an explanation of how the policy of the rule will be served without strict compliance with the rule.

2. The attorney general department of corrections may grant a variance if it is determined that:
 - a. Compliance with the rule would cause extreme hardship as a result of circumstances which are unique to the jail, juvenile detention center, or regional corrections center.
 - b. The jail, juvenile detention center, or regional corrections center can and will substantially comply with the policy of the rule during the time of the variance from the rule.
3. The attorney general department of corrections shall give written reasons for granting or denying a variance request.
4. In previously existing jails, juvenile detention centers, or regional corrections centers where specific rules cannot be complied with because of alleged difficulty or undue hardship, exception to specific physical plant rules shall be made if the intent of the rule is met and security, supervision of prisoners, established programs, or the safe, healthful, or efficient operation of the jail, juvenile detention center, or regional corrections center is not seriously affected.

SECTION 8. AMENDMENT. Section 12-44.1-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-44.1-27. Corrective action - Enforcement.

1. Upon receipt of an inspection report stating noncompliance, the governing body of a jail, juvenile detention center, or regional corrections center shall promptly meet with the attorney general's department of corrections' inspection personnel to consider the inspection report. The governing body shall then initiate appropriate corrective action within ninety days following receipt of the inspection report, or may voluntarily close the jail, juvenile detention center, or regional corrections center or the objectionable portion.
2. If the governing body of a jail, juvenile detention center, or regional corrections center fails to initiate corrective action within ninety days after receipt of the inspection report and notice of noncompliance, or fails to close the jail, juvenile detention center, or regional corrections center or objectionable portion, the attorney general director of the department of corrections is authorized to petition the district court of the judicial district in which the jail, juvenile detention center, or regional corrections center is located to order the initiation of corrective action or the closure of the jail, juvenile detention center, or regional corrections center. The petition to the district court shall include the inspection report regarding the jail, juvenile detention center, or regional corrections center. The governing body shall have twenty days to respond to the petition and shall serve a copy of the response on the attorney

general director of the department of corrections by certified mail.

3. A hearing shall be held on the petition of the attorney general department of corrections before the district court. An order shall be rendered by the district court which dismisses the petition, directs that corrective action be initiated in some form by the governing body, or directs the closure of the jail, juvenile detention center, or regional corrections center.

SECTION 9. AMENDMENT. Section 12-46-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-03. Officers of the North Dakota industrial school. The officers of the North Dakota industrial school shall be a superintendent and such teachers and assistants as may be deemed necessary and recommended by the superintendent and approved by the director of institutions the division of juvenile services.

SECTION 10. AMENDMENT. Section 12-46-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-04. Appointment and removal of officers — Term of office. The director of institutions the division of juvenile services with the approval of the director of the department of corrections and rehabilitation shall appoint the superintendent; and he shall hold his office for a term of two years and until his successor is appointed and qualified; unless he is sooner removed by the director of institutions. He. The superintendent may be removed by the director of institutions the division of juvenile services with the approval of the director of the department of corrections and rehabilitation for misconduct, neglect of duty, incompetency, or other proper cause showing his an inability or refusal properly to properly perform the duties of his the office; but such removal shall be had only after an opportunity is given to him to be heard before a board consisting of the governor, attorney general, and state treasurer upon preferred written charges. Such removal when made, however, shall be final. All other officers and employees shall be appointed by the superintendent, subject to the approval of the director of institutions; and shall hold office at the pleasure of the superintendent the division of juvenile services. The superintendent shall show in the record of any officer or employee who is discharged by him the superintendent the reason therefor.

SECTION 11. AMENDMENT. Section 12-46-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-06. Salary of superintendent, officers, and employees. The superintendent and all other officers and employees shall receive a salary to be fixed by the director of institutions the division of juvenile services with the approval of the director of the department of corrections and rehabilitation within the limits of legislative appropriations therefor. All other officers and employees of the school shall receive salaries determined by the superintendent and approved by the director of the division of juvenile services.

SECTION 12. AMENDMENT. Section 12-46-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-09. Superintendent may make rules. The superintendent, subject to the approval of the director of institutions the division of juvenile services, shall make rules and regulations not in conflict with the laws of this state:

1. For the admission of visitors.
2. For the government of officers and employees of the North Dakota industrial school.
3. For the conduct of ~~inmates therein~~ students committed to the North Dakota industrial school.

A printed copy of the rules and regulations shall be furnished to each person student committed to the North Dakota industrial school at the time he the student is received and to each officer or employee thereof at the time he is appointed of hire. ~~Ten~~ Two copies of such rules shall be furnished to the state law library for the use of the state officials and the public.

SECTION 13. AMENDMENT. Section 12-46-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-10. Records of institutional transactions, complaints, and rule infractions. The superintendent shall cause to be kept a correct record of all the transactions of his the office and a correct account of all his the superintendent's doings. ~~He~~ The superintendent shall ~~cause to be kept~~ keep a memorandum of every complaint of cruel and unjust treatment of any officer or other person ~~or of the want of proper clothing or food made by any inmate,~~ and also of any infraction of the rules and regulations of the school by any of the persons students committed thereto, naming him the student, and specifying the offense and the punishment, if any, inflicted therefor, and such record and memorandum shall be laid before the director of institutions the division of juvenile services upon his request.

SECTION 14. AMENDMENT. Section 12-46-10.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-10.1. Disciplinary committee - Members - Duties. The superintendent of the North Dakota industrial school shall appoint a disciplinary committee. The membership of this committee should include one cottage supervisor, one member of the professional staff, and may include one student and one member of the general public, as determined by the superintendent. The committee shall hear all charges of serious breach of discipline and recommend to the superintendent what disciplinary action should be administered. The committee will maintain records of its actions. These records shall be subject to review by the director of institutions the division of juvenile services, the attorney general, or any legislative committee at their request. Nothing in this section shall be construed to prevent the superintendent from placing a child under close supervision immediately after that child commits a serious breach of discipline, however, within forty-eight hours the disciplinary committee shall hear the case and make its recommendations to the superintendent concerning further action to be taken, if any.

SECTION 15. AMENDMENT. Section 12-46-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-17. Incurrigible ~~inmate~~ student returned to sheriff - Original proceedings continued. If any person who has been convicted of a felony and committed to the North Dakota industrial school shall be or become incurrigible and manifestly or persistently dangerous to the good order, government, and welfare of such school or the students thereof, the director of ~~institutions~~ the division of juvenile services must order such person returned and delivered to the sheriff of the county from which he was committed, and the proceedings against such person thereafter shall be resumed and continued as though no order or warrant of commitment to the North Dakota industrial school had been made.

SECTION 16. AMENDMENT. Section 12-46-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-46-18. Employment and compensation of persons committed. Every person committed to the state industrial school or its auxiliary facilities may receive a stipend as determined by the superintendent, and approved by the director of ~~institutions~~ the division of juvenile services, within the limits of appropriations made by the legislative assembly for such purpose.

SECTION 17. AMENDMENT. Section 12-47-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-06. Appointment of officers — ~~Term of office.~~ The director of ~~institutions~~ the division of adult services with the concurrence of the director of the department of corrections and rehabilitation shall appoint the warden; and he shall hold his office for a term of two years and until his successor is appointed and qualified; unless he is sooner removed by the director of ~~institutions~~. He. The warden may be removed by the director of ~~institutions~~ the division of adult services with the approval of the director of the department of corrections and rehabilitation for misconduct, neglect of duty, incompetency, or other proper cause showing his an inability or refusal properly to properly perform the duties of his the office; but such removal shall be had only after an opportunity is given to him to be heard before a board consisting of the governor, attorney general, and state treasurer upon preferred written charges. Such removal when made, however, shall be final. All other officers and employees shall be appointed by the warden, subject to the approval of the director of ~~institutions~~; and shall hold office at the pleasure ~~division of the warden~~ adult services. The warden shall show in the record of any officer or employee who is discharged by him ~~the warden~~ the reason therefor.

SECTION 18. AMENDMENT. Section 12-47-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-08. Salary of warden and other officers. The warden shall receive a salary to be fixed by the director of ~~institutions~~ the division of adult services with the approval of the director of the department of corrections and rehabilitation within the limits of the legislative appropriation. All other officers and employees of the penitentiary shall receive such amounts salaries as determined by the warden and approved by the director of ~~institutions~~ from time to time may determine and establish the division of adult services.

SECTION 19. AMENDMENT. Section 12-47-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-11. Powers and duties of warden. The warden, under the direction of the director of ~~institutions~~ the division of adult services, shall have the charge, custody, and control of the penitentiary and the persons committed thereto, together with all lands, buildings, furniture, tools, implements, stock, provisions, and every other species of property pertaining thereto or within the premises thereof, excluding the crime bureau building-officer's quarters, and control, maintenance, and management of said crime bureau building which shall solely be under the direction of the director of ~~institutions~~ the department of corrections and rehabilitation. ~~He~~ The warden shall superintend and be responsible for the policing of the penitentiary and the discipline of the inmates.

SECTION 20. AMENDMENT. Section 12-47-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-12. Warden to make rules and regulations. The warden, subject to the approval of the director of ~~institutions~~ the division of adult services, shall make rules and regulations not in conflict with the laws of this state and shall prescribe penalties for the violation thereof:

1. For the admission of visitors, but admission of visitors shall not be limited to less than ~~two~~ four days in each week.
2. For the government of officers and employees of the penitentiary.
3. For the conduct of prisoners ~~therein~~ committed to the state penitentiary.

A printed copy of the rules and regulations shall be furnished to each person committed to the penitentiary at the time ~~he is received~~ of admission and to each official or employee thereof at the time ~~he is appointed~~ of hire. ~~For~~ Two copies of such rules shall be furnished to the state law library for the use of the state officials and the public. Such rules shall be explained to each prisoner in ~~his~~ the prisoner's native language if ~~he~~ the prisoner cannot read English.

SECTION 21. AMENDMENT. Section 12-47-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-13. Warden to keep records. The warden shall keep a correct record of all transactions of ~~his~~ the office and a correct account of all ~~his~~ the warden's doings. ~~He~~ The warden shall keep a daily journal of the proceedings of the penitentiary in which ~~he~~ shall ~~note~~ be noted all infractions of the rules and regulations thereof by any officer or employee, and shall enter in such journal a memorandum of every complaint made by any inmate of cruel or unjust treatment by any officer or other person, or a want of proper clothing or food, and also any infraction of the rules and regulations of the penitentiary by any of the inmates, naming ~~him~~ the inmate and specifying the offense and the punishment, if any, inflicted therefor, and said journal and memorandum shall be laid before the director of ~~institutions~~ the division of adult services upon request.

SECTION 22. AMENDMENT. Section 12-47-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-15. Absence of warden and deputy wardens. ~~The warden and the deputy wardens shall not be absent from the Mandan-Bismarck area at the same~~

time except by permission of the director of institutions. When the warden and the deputy wardens are absent, the warden must designate in writing one of his a staff members member to act as warden, and must inform the director of institutions the division of adult services, in writing, of his choice prior to each absence, who will act as warden.

SECTION 23. AMENDMENT. Section 12-47-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-18. Warden has custody of inmates pursuant to terms of sentence. The warden shall have the charge and custody of all inmates of the penitentiary. ~~He~~ The warden shall retain, confine, and imprison each person received by him under sentence to the penitentiary until the expiration of his the inmate's term of sentence or until he the inmate otherwise is lawfully entitled to release. The warden shall care for, govern, and make an effort to employ all inmates in conformity with their respective sentences and in the manner prescribed by law and the rules and regulations lawfully adopted for the conduct of the penitentiary.

SECTION 24. AMENDMENT. Section 12-47-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-32. Cash payments - State auditor Office of management and budget may issue warrant. The state auditor office of management and budget may issue his a warrant on the state treasurer, payable to the treasurer of the penitentiary, for the payment of cash advanced to discharged inmates for transportation and temporary aid or for such items as it is necessary for the warden or the director of institutions the department of corrections and rehabilitation to pay in cash. The warden shall file with the state auditor office of management and budget an affidavit stating that certain specific sums are necessary to pay cash advanced to discharged inmates for transportation and temporary aid or other incidental items.

SECTION 25. AMENDMENT. Section 12-47-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-47-34. Escapes from warden's custody - Warden may offer reward for recapture - Payment of reward. The warden, with the approval of the director of institutions the department of corrections and rehabilitation, may adopt any measures he may deem deemed proper to aid in the detection and capture of persons escaping from the custody of the warden. When an inmate escapes, the warden shall use every means at his the warden's command for the apprehension of such person, and for that purpose he may offer a reward of not to exceed one hundred thousand dollars and not less than twenty-five one hundred dollars for information leading to such apprehension.

SECTION 26. AMENDMENT. Section 12-48-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-02. Director of institutions the department of corrections and rehabilitation to make rules regarding employment of inmates. The director of institutions the department of corrections and rehabilitation shall establish rules and regulations relating to the care, treatment, and management of all prisoners, wherever they may be employed.

SECTION 27. AMENDMENT. Section 12-48-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-03. Manner of employing inmates. The director of ~~institutions~~ the department of corrections and rehabilitation and the warden of the penitentiary shall attempt to employ all inmates of the penitentiary in maintaining the penitentiary and the grounds thereof, in carrying on the work of the industries established at the penitentiary or at other state institutions, in doing any work necessary to be done in the erection, repair, or improvement of any of the state buildings, including the executive mansion, and the grounds of such buildings, or in the construction and improvement of the public highways of the state. Inmates may also be employed in work projects for county and local governmental agencies and subdivisions. The prisoners shall be employed, insofar as practicable, on in the work to which they are best adapted and on in the work that will make it possible for them to acquire skill so that they will be able to earn a livelihood when they are paroled or discharged from the institution. Inmates may be employed outside the yard of the penitentiary in cultivating and improving any ground belonging thereto. The warden shall be held responsible for the escape of any inmate notwithstanding that such employment is outside the penitentiary if the escape is made possible through the warden's negligence or the negligence of himself or any of his the warden's subordinates.

SECTION 28. AMENDMENT. Section 12-48-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-03.1. The director of ~~institutions~~ the department of corrections and rehabilitation may establish and engage in new prison industries. The warden of the state penitentiary, under the direction and with the approval of the director of ~~institutions~~ the department of corrections and rehabilitation, is authorized to establish, and engage in, such new prison industries as the director deems necessary, and which are of greatest benefit to and in the best interest of the state of North Dakota, the state penitentiary, the North Dakota state farm, and the inmates of the institutions. The warden, with the approval of the director of ~~institutions~~, may also discontinue existing industries where such discontinuance is deemed necessary. The director and the warden shall make all rules and regulations and do all things necessary or incidental to the establishing and maintaining of such industries including the manufacture, sale, or distribution of the produce or products therefrom, and, so far as is compatible with the efficient operation of the industry, shall use the inmates and employees of the penitentiary as laborers in such industries. The director and warden shall also do all things necessary and incidental to the discontinuance of those industries no longer deemed necessary or of benefit. Except as provided in subsections 1, 2, and 3, the director of ~~institutions~~ may authorize the sale of selected prison industry products to wholesale and retail outlets. All other prison industry products shall be limited for sale to nonprofit, charitable, and tax-supported organizations, institutions, and agencies, and to municipal, county, state, or other governmental subdivisions and agencies. All governmental entities may purchase available products from the prison industries unless such purchase from the prison is impractical or prohibited by law. The warden shall keep a true and accurate account of all receipts from the established industries and deposit the earnings in an account as provided by law. Sales of prison industry products are subject to the following:

1. All hardwood, fiberesin, upholstered, and metal art work products made in the prison by roughrider industries, or other factory that

manufactures the above products, may be purchased directly by state agencies and political subdivisions for use in government-owned or rented buildings and by nonprofit organizations excluding trade associations, fraternal organizations, co-ops, and health insurance companies. All other prison-made hardwood, fiberesin, upholstered, and metal art work products may be sold only through wholesale or retail outlets that possess a valid sales tax permit, or through export firms for sale to international markets.

2. Hardwood, fiberesin, upholstered, and metal art work products manufactured by roughrider industries, or other factory that manufactures the above products, and purchased by state agencies, nonprofit organizations, and political subdivisions may not be disposed of or leave the premises of the state agency, nonprofit organization, and political subdivision for a period of ten years from the date of the original purchase without written authorization from the director of institutions the department of corrections and rehabilitation.
3. Subsections 1 and 2 do not prevent the sale of prison-made hardwood, fiberesin, upholstered, or metal art work products to any state institution or facility operated by the director of institutions or by the director of the department of corrections and rehabilitation.

SECTION 29. AMENDMENT. Section 12-48-03.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-03.2. Prison industry authorized to trade, barter, and exchange merchandise, equipment, and services. Prison industry is authorized to trade, barter, and exchange merchandise, equipment, and services with any state agency if such is in the best interest of the prison industry and approved by the warden and the director of institutions the department of corrections and rehabilitation.

SECTION 30. AMENDMENT. Section 12-48-06.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-06.1. Prison industry advisory committee. There is hereby established a prison industry advisory committee which consists of the director of institutions the department of corrections and rehabilitation and seven members, who are representative of each type of industry within the prison, and who are appointed by the governor. Meetings of the committee shall be called not less than twice a year by the director of institutions who shall be the chairman chairperson of the committee. The appointed members shall be paid mileage and expenses by the prison industry as authorized for state officials and employees.

SECTION 31. AMENDMENT. Section 12-48-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-07. Tools and equipment. The warden, under the direction of the director of institutions the division of adult services, shall procure the machinery, tools, and equipment necessary to carry on and conduct the work and industries of the penitentiary.

SECTION 32. AMENDMENT. Section 12-48-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-14. Compensation of inmates. Prisoners engaged in carrying on the work of the penitentiary and its industries shall receive compensation in an amount to be determined by the warden and approved by the director of institutions the department of corrections and rehabilitation within the limits of legislative appropriations for that purpose. The warden shall assign a reasonable daily task to be performed by each prisoner, and the compensation of the prisoner shall be determined by the amount of work ~~he~~ the prisoner performs on such task. All prisoners faithfully performing the daily task assigned shall receive the maximum compensation determined by the director of institutions warden, and whenever it becomes necessary in carrying on this work for a prisoner to labor in excess of ten hours per day, ~~he the prisoner~~ shall receive such additional compensation as is allowed by the director of institutions warden. All prisoners working at the penitentiary industries may receive pay based upon actual production of salable items as determined by the director of institutions warden, to be paid out of such funds as may be appropriated by the legislative assembly.

SECTION 33. AMENDMENT. Section 12-48-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-15. Disposition of moneys earned - Warden to keep account of money earned by inmates - Investment in interest-bearing accounts.

1. The warden of the penitentiary shall keep an account for each inmate. Fifty percent of the earnings of inmates shall be deposited to the credit of their account until they have accumulated in that account a sum of money as provided by penitentiary rules and regulations from their earnings at the penitentiary, or such portion thereof as they have earned at the time of their discharge and the other fifty percent of the earnings must be paid to the inmates on a regular basis. All moneys in the inmate's account shall be paid to the inmate in full when discharged.
2. Inmates may, in writing, authorize the warden or designee to deposit any of their accumulated earnings from the prison industries, hobby, work release, or any other prison program in an interest-earning account in the Bank of North Dakota for the benefit of the inmate. The account shall be a two signature account requiring the inmate's signature and that of an authorized designated officer or employee of the state penitentiary for withdrawal.
3. Other inmate income or funds from sources outside of the penitentiary may be directly deposited or invested by the inmate in any bank or other organization, unless sentencing stipulations, court orders, the inmate's competency, or other interests of the inmate require that the warden deposit such income or funds or a portion thereof in the above-noted Bank of North Dakota account for the inmate's benefit and protection. Before making such a deposit of funds or income from sources outside of the penitentiary for the inmate's benefit and protection, the warden must receive the approval of the director of institutions the division of adult services and provide a written letter of explanation to the inmate.

Funds directly invested or deposited by inmates into their independent accounts, even when assisted in doing so by an officer or employee of the penitentiary, shall in no way make the penitentiary or its officers or employees responsible or accountable for such inmate's investments and deposits.

4. The warden, through ~~his~~ the staff, is responsible for guiding inmates in making proper use of their funds to pay their obligations, ~~and, if possible,~~ including the payment of court costs, court appointed counsel fees, and court ordered restitution, and to provide for their dependent relatives, or to provide for themselves their own medical, surgical, or dental treatment or services not generally provided by the state. The sum of money as provided by penitentiary rules and regulations from each inmate's earnings required to be deposited and accumulated by this section shall not be available to the inmate until discharge. The remainder of the inmate's earnings, including interest earned, shall be available to the inmate under the supervision and control of the warden or designee.

SECTION 34. AMENDMENT. Section 12-48-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48-22. Fines for misconduct of prisoner. The warden, with the approval of the director of ~~institutions~~ the department of corrections and rehabilitation, shall institute and maintain a uniform system of fines and penalties to be deducted from the compensation credited to any prisoner for misconduct or refusal to perform the daily task assigned him.

SECTION 35. AMENDMENT. Section 12-48.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48.1-01. Director may provide certain services for inmates. The director of ~~institutions~~ the department of corrections and rehabilitation may participate in programs under which inmates sentenced to the penitentiary and the state farm may be gainfully employed or participate in an educational or other rehabilitation program either in or outside the institution. The director may obtain separate facilities with minimum security for the housing of inmates granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an inmate so released, the director may arrange for the housing of the inmate in local confinement facilities.

SECTION 36. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-48.1-02. Conditions of eligibility for release programs. An inmate shall be eligible for programs outside the institution when the warden determines the inmate is not a high security risk, not likely to commit a crime of violence, and is likely to be rehabilitated by such program. ~~The parole board; after a determination by the warden as provided above; may authorize participation in outside programs; notwithstanding the fact that the inmate has not yet completed a minimum sentence imposed for an offense committed prior to July 1, 1975. An inmate may make application to the warden for permission to participate in such programs. If the warden approves or disapproves the application; he shall forward it to the parole board.~~ The warden, with the approval of the director of the department of

corrections and rehabilitation, may authorize participation in outside programs for an inmate who has been sentenced to ten years or less to the state penitentiary or state farm. In sentences of more than ten years, the parole board, after approval by the warden, may authorize participation in outside programs. The application shall include a statement that the inmate agrees to abide by all terms and conditions of the particular plan adopted for him, and shall state the name and address of the proposed employer, if any, and shall contain such other information as the parole board may require. The parole board may approve, disapprove, or defer action on an application approved by the warden. The plan shall be signed by the inmate prior to participation in the program. Approval may be revoked for any reason by the warden or the parole board at any time after being granted. The parole board and warden shall prescribe rules of conduct and treatment for all inmates on release programs. Short leaves, not to exceed seventy-two hours, may be granted, by the warden, with the approval of the director of the department of corrections and rehabilitation, to inmates with sentences of ten years or less and by the parole board, with the warden's approval to inmates with sentences of more than ten years and upon recommendation by the warden, to all inmates of the state farm and to penitentiary inmates who have been on work or education release programs for at least thirty days. All rules adopted by the parole board and the warden relating to release programs and short leaves shall conform, to the extent allowable by law, with executive order No. 11755 issued by the President of the United States.

SECTION 37. AMENDMENT. Section 12-51-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-51-02. Purpose of state farm. It shall be the purpose of the state farm to employ in manual labor the prisoners committed or transferred thereto. Said farm shall be administered as a work farm for the purpose of assisting in the rehabilitation of the prisoners committed thereto, and with the purpose of furnishing to them labor, instruction, and supervision that will accomplish the purpose sought in this chapter. The director of ~~institutions~~ the department of corrections and rehabilitation may provide for such labor, instruction, and supervision for the persons committed to the state farm.

SECTION 38. AMENDMENT. Section 12-51-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-51-04. Farm operated with penitentiary - Warden to be superintendent - Employment of help. The director of ~~institutions~~ the department of corrections and rehabilitation shall have charge and control of the state farm, and all property which said director has received or acquired, or hereafter may receive or acquire, in connection with the establishment and operation of said farm. For administrative and operational purposes, the said farm shall be deemed a facility of the state penitentiary and shall be operated in connection therewith. The warden of the penitentiary shall be the superintendent or chief administrative officer of the farm. Machinery, equipment, livestock, and other property of the penitentiary and of the farm may be used interchangeably. The ~~director~~ warden may employ such employees as may be necessary and as available funds will permit, and may prescribe their duties and fix their compensation. The ~~director~~ warden may assign to said farm, in any capacity, persons employed in connection with the operation of the penitentiary. Such persons may be assigned either for full-time or part-time work, and, in the judgment of the ~~director~~ warden, the compensation of such persons may be continued to be paid

and charged as before they were assigned to work at said state farm. ~~Until the said farm has been put into operation, all properties that have been received and acquired by the said director for the establishment and operation of said farm may be utilized in carrying on the operations of the state penitentiary.~~

SECTION 39. AMENDMENT. Section 12-51-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-51-05. Laws governing management of state farm. The laws relating to the government and management of, and parole from, the penitentiary, so far as the same may be applicable and not inconsistent with the provisions of this chapter, in all respects shall apply to the government and management of, and parole from, the state farm as to the duties and authority of the director of institutions the department of corrections and rehabilitation and his the director's employees used at said state farm.

SECTION 40. AMENDMENT. Section 12-51-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-51-06. Director Warden and the director of institutions the department of corrections and rehabilitation to establish rules for control of state farm and prisoners committed thereto. The warden with the approval of the director of institutions the department of corrections and rehabilitation may establish, adopt, and enforce proper rules and regulations consistent with the provisions of this chapter for the control and administration of the state farm and the prisoners committed thereto.

SECTION 41. AMENDMENT. Section 12-51-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-51-09. Director of institutions Warden may transfer persons from state farm to penitentiary or from penitentiary to state farm. When the director of institutions warden, either at the time of commitment or at any time thereafter, shall determine determines that for purposes of safety of other inmates or of the general public or for the purpose of discipline or medical care it is necessary or proper that any person committed to the state farm should be transferred to the state penitentiary, such transfer may be made for such period as the director may deem warden deems proper. Where a person who has been committed to the state farm conducts himself in such manner as to interfere interferes with the operation of the farm, or with the welfare or safety of others, and where in the judgment of the director of institutions warden the best interests of such person or the best interests and welfare of other persons committed to the farm so require, the director warden may direct that such person be removed from the farm and placed in the penitentiary. The director warden also may direct that persons who have been sentenced to the penitentiary be transferred to the farm, when such action seems desirable and for the best interests of the person so transferred and in no manner detrimental to the welfare of other persons who have been committed to said farm. The director warden may cause persons committed to the said farm to be assigned for work incident to the operations of the penitentiary or of any other institution or facility under the control of the director warden.

* SECTION 42. AMENDMENT. Section 12-52-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 12-52-01 was also amended by section 1 of Senate Bill No. 2210, chapter 157.

12-52-01. Director of institutions Department of corrections and rehabilitation to administer juvenile aftercare program and other treatment and rehabilitation programs. The director of institutions division of juvenile services with the approval of the director of the department of corrections and rehabilitation may provide ~~an~~ a juvenile aftercare program and other treatment and rehabilitation programs and may contract with public and private agencies to provide aftercare services for persons committed to the state industrial school division of juvenile services and may establish facilities in, and rules and regulations under, which such persons may receive aftercare services.

SECTION 43. AMENDMENT. Section 12-52-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-52-02. Aftercare granted on recommendation of superintendent. No aftercare program shall be provided for any person committed to the North Dakota industrial school or placed under the guardianship, control, and custody of the superintendent, unless the superintendent recommends the program to the director of institutions the division of juvenile services, and some suitable person will receive the person to be placed in the aftercare program under conditions approved by the superintendent. Nothing in this chapter shall prevent the placing of any person into his own home or into a licensed foster home under any program administered by the department of human services.

SECTION 44. AMENDMENT. Section 12-52-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-52-03. Recommitment to the state industrial school for violation of aftercare rules. A person placed in an aftercare program shall be under the guardianship and control of the director of institutions the division of juvenile services, and is subject, at any time until the expiration of the time for which ~~he~~ the person was committed, to be taken into actual custody and returned to the state industrial school. The director of institutions may enforce the rules and regulations made by him for the administration of aftercare programs and the placement of students in them, and when ~~he~~ the director is satisfied that a person placed in an aftercare program has violated any of the rules or regulations, ~~he~~ the director may order that person to be taken into actual custody and returned to the state industrial school, and to be detained therein until the expiration of the time for which ~~he~~ the person was committed, or until ~~he~~ the person is again placed in an aftercare program. The director shall maintain a record of any such order, and a certified copy of the order may be delivered to any peace officer, or any officer or employee of the state industrial school, for service and return. It shall be the duty of the officer or employee to receive the order and to apprehend and immediately deliver the person named in the order to the superintendent of the state industrial school.

SECTION 45. AMENDMENT. Section 12-52-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-52-04. Officer's or employee's return on order of recommitment. The officer or employee executing an order of the director of institutions the division of juvenile services for the apprehension and return of a person to the state industrial school shall endorse on the order a return of his the officer's doings thereunder and deliver the same, together with the person named therein, to the superintendent of the school. The superintendent shall

give to the officer or employee a certificate acknowledging the receipt of the person, order, and return.

SECTION 46. AMENDMENT. Section 12-52-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-52-05. Officer's fee on recommitment - Exception. The fee of any officer, except an officer or employee of the state industrial school, executing an order of the director of ~~institutions~~ the division of juvenile services for the apprehension and return of a person to the state industrial school shall be the same as that for like service in criminal actions.

SECTION 47. AMENDMENT. Section 12-52-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-52-07. Discharge for good conduct. The director of ~~institutions~~ the division of juvenile services may discharge any student from the state industrial school at any time upon satisfactory evidence of reformation and as a reward for good conduct and diligence in study. If the student has no parent, guardian, or other person to whom to return, the director of ~~institutions~~ shall arrange for and procure some suitable person to receive, employ, and care for the person so discharged, ~~without charge to the state.~~

SECTION 48. AMENDMENT. Section 12-55-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-55-07. ~~Parole officers~~ Director - Appointment - Duties. The ~~ex officio members of the board of pardons~~ director of the division of adult services with the approval of the director of the department of corrections and rehabilitation and the approval of the ex officio board members of the pardon board shall appoint ~~one or more parole officers; one a director of whom may be parole and probation, who shall serve as the clerk of the board of pardons and of the parole board, whose duties shall be:~~

1. To keep a docket of all applications filed with the board of pardons or the parole board and of all action taken thereon.
2. To keep a record of every petition for a pardon, parole, reprieve, or commutation of sentence received by each board, and of every letter or paper filed or appearance made in connection therewith.
3. To keep a record of every pardon, parole, reprieve, or commutation of sentence granted or refused and of the reasons assigned for each such action.
4. To maintain a complete and accurate filing system of all proceedings before each board.
5. To keep and preserve all the files and records of each board and perform duties in relation to files and records as each board prescribes.
6. To have supervision over and to look after the welfare of persons who have been paroled from the penitentiary and of persons who have received sentences to probation or suspended sentences and have been placed upon probation.

- 2- 7. To keep a complete record of all persons under their supervision and to make such reports relating to such persons as the board of pardons or the parole board shall require.
- 3- 8. To make such investigations and perform such other duties in connection with applications and petitions for pardon, commutation of sentence, or parole as may be prescribed by the board of pardons or the parole board.
- 4- 9. To perform such other duties ~~as assigned by the board of pardons or, the parole board may assign to them, or the director of the division of adult services.~~

* SECTION 49. AMENDMENT. Section 54-23-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-23-01. Institutions, agencies, and departments under control of director of institutions. The director of institutions shall have full power to manage, control, and govern, subject only to the limitations contained in this chapter and in title 25, the penitentiary department of corrections and rehabilitation, the school for the blind, the school for the deaf, the Grafton state school, the North Dakota industrial school, and San Haven radio communications, and the state library. The director does not have the power to manage, control, and govern the veterans' home.

SECTION 50. AMENDMENT. Section 54-23-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-23-02. Director shall appoint superintendent or warden of institutions and directors of agencies under his the director's control. The director of institutions shall appoint and may remove the superintendent or warden of each institution under his management and control of the school for the blind and school for the deaf, the state librarian, and the directors of radio communications and the department of corrections and rehabilitation. If there is an alleged or seeming conflict between the powers of the a superintendent or warden director and the director of institutions, the determination of such question by the director of institutions shall be final.

SECTION 51. AMENDMENT. Section 54-23-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-23-22. Transfer of inmates students from the industrial school to other institutions. The director of institutions the division of juvenile services may transfer inmates students of the state industrial school to the state hospital or to the Grafton state school whenever the director is satisfied, upon investigation, that such transfer is advisable. If any inmate student, so transferred, is maintained at the expense of the county from which he the student was committed, the cost of his the student's maintenance in the institution to which he is transferred shall be charged to such county and shall be collected therefrom upon notice to the county auditor of said county by the director.

SECTION 52. AMENDMENT. Section 54-23-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 54-23-01 was also amended by section 13 of House Bill No. 1229, chapter 239.

54-23-26. Property of institution is property of state. All property of every kind and all money in the charge of the warden or superintendent of any institution or director of any agency under the control of the director of institutions, or that shall come to his the hands or under his the director of institutions' control on account of the institution or agency under his the director's charge, or from the business thereof, is the property of the state and at all times shall be kept separate and apart from the property of such warden or superintendent or director.

SECTION 53. A new chapter to title 54 of the North Dakota Century Code is hereby created and enacted to read as follows:

Department of corrections and rehabilitation - Creation - Duties - Programs. There is hereby created a department of corrections and rehabilitation in the office of the director of institutions. The department is responsible for the direction and general administrative supervision, guidance, and planning of adult and juvenile correctional facilities and programs within the state. The department includes a division of adult services, a division of juvenile services, and such other divisions as are determined necessary for the effective and efficient operation of the department. Programs and facilities included in the department are the North Dakota state penitentiary, state farm, parole and probation for adult offenders, state industrial school, community programs and services for juvenile offenders under the division of juvenile services, and any other programs developed by the department.

Purpose. The purpose of the department of corrections and rehabilitation is:

1. To develop a statewide correctional philosophy that will provide direction, goals, and standards for corrections.
2. To provide for the care, custody, discipline, training, and treatment of persons committed to state correctional facilities and programs.
3. To coordinate and provide a continuum of correctional services to both adult and juvenile clients.
4. To promote and develop close communication and mutual understanding of corrections issues and concerns between the courts and the department.
5. To provide joint training of staff and career opportunities for corrections staff.
6. To work with local and state entities to develop alternatives to conventional incarceration for those offenders who can be dealt with more effectively in less restrictive, community-based facilities and programs.

Director - Appointment - Qualifications - Compensation. The chief administrative officer of the department is the director of the department of corrections and rehabilitation, who shall be appointed by the director of institutions. The person appointed as director must hold at least a bachelor's degree from an accredited college or university and must have held a management position in correctional or related work for at least five

years. The salary of the director will be set by the director of institutions within the limits of legislative appropriations and within the salary range of the classified position as established by the central personnel division for the position.

Director - Powers and duties. The director of the department of corrections and rehabilitation has the following powers and duties:

1. To manage and control all institutions and programs within the department and to administer and enforce the laws with which the department is charged.
2. To promote a unified criminal justice system and develop a statewide correctional philosophy in cooperation with the courts, law enforcement, and other entities in the criminal justice system.
3. To develop necessary programs and services for adult and juvenile offenders, within legislative appropriations, to provide for their treatment and rehabilitation and to recognize their special needs.
4. To develop, maintain, and revise as required a comprehensive master plan for the state's correctional system which must indicate the system's needs and resources.
5. To establish policies and procedures necessary to carry out the responsibilities of the department.
6. To organize the department into an adult services division, a juvenile services division, and such other divisions that will enable it to function most effectively and efficiently.
7. To exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules.
8. To employ and remove the director of the division of juvenile services, the director of the division of adult services, and other division directors and personnel who may be deemed necessary by the director of the department. Until the director of the department of corrections and rehabilitation has been granted the full-time equivalent positions within the department's budget for the division director positions, or when the positions are vacant, the responsibilities of these positions must be assumed by the director of the department of corrections and rehabilitation or by the director's designee.
9. To delegate authority to subordinates as necessary and appropriate, clearly delineating the delegated authority and limitations.
10. To promote the development of alternatives to conventional incarceration for those offenders who can be dealt with more effectively in less restrictive, community-based facilities and programs.

Appointment and removal of officers. The director of the department of corrections and rehabilitation with the approval of the director of institutions may appoint a director of the division of juvenile services, a

director of the division of adult services, and other division directors and personnel as deemed necessary for the effective and efficient operation of the department. The director of the division of juvenile services, the director of the division of adult services, and other division directors who may be appointed, shall meet qualifications as established for the classified positions under the central personnel classification system. The division directors may be removed by the director of the department, with the approval of the director of institutions, for misconduct, neglect of duty, incompetency, or other cause showing an inability or refusal to properly perform the duties of their office. All other officers and employees of each division must be appointed and removed by the director of the division, subject to the approval of the director of the department of corrections and rehabilitation. All officers and employees of the department of corrections and rehabilitation are subject to the provisions of the state personnel policies.

Salaries of division directors and other officers. The director of the department of corrections and rehabilitation shall determine the salary of each division director within the limits of legislative appropriations and within the salary range of the classified position as established by the central personnel division for the position. All other officers and employees shall receive salaries determined by their division director and approved by the director of the department.

SECTION 54. REPEAL. Sections 12-47-33, 12-48-04, 12-48-05, 12-55-06, 54-21-13, 54-23-19, 54-23-20, 54-23-23, 54-23-27, and 54-23-28 of the North Dakota Century Code are hereby repealed.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 157

SENATE BILL NO. 2210
(Committee on Judiciary)
(At the request of the Director of Institutions)

DIVISION OF JUVENILE SERVICES

AN ACT to create and enact two new sections to chapter 27-21 of the North Dakota Century Code, relating to definitions and custodial powers for purposes of the division of juvenile services; to amend and reenact sections 12-52-01, 27-21-01, 27-21-02, 27-21-03, 27-21-05, 27-21-06, 27-21-07, 27-21-08, and 27-21-09 of the North Dakota Century Code, relating to aftercare and other programs and the creation of a division of juvenile services in the department of corrections and rehabilitation; and to repeal sections 27-21-04 and 27-21-10 of the North Dakota Century Code, relating to an advisory board and cooperation with federal agencies and departments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 12-52-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-52-01. Director of institutions Department of corrections and rehabilitation to administer juvenile aftercare program and other treatment and rehabilitation programs. The director of institutions department of corrections and rehabilitation may provide an a juvenile aftercare program and other treatment and rehabilitation programs and may contract with public and private agencies to provide aftercare services for persons committed to the state industrial school division of juvenile services and may establish facilities in, and rules and regulations under, which such persons may receive aftercare services.

SECTION 2. A new section to chapter 27-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter:

1. "Placement hearing" means a review of the placement of a child by a team of at least three individuals, selected by the division director, who have not had a direct involvement with the child. The child, or the child's representative, must be given the opportunity to inform the reviewing team of the child's interest and concerns. A summary record of these proceedings must be made.
2. "Temporary placement" means the placement of a child who may be a danger to self or others in a facility or setting for a short period of time until the most appropriate placement can be determined for the child. A temporary placement may also be the prompt removal of a child from a placement into an alternative setting until another more appropriate setting can be found.

* NOTE: Section 12-52-01 was also amended by section 42 of Senate Bill No. 2212, chapter 156.

SECTION 3. AMENDMENT. Section 27-21-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-01. Creation of state youth authority division of juvenile services - Director. A state youth authority division of juvenile services is hereby created and established with the powers and duties prescribed by this chapter. The state youth authority division of juvenile services shall be created within the department of human services corrections and rehabilitation, and its chief administrative officer shall be the executive director of the department of human services, or his designee appointed by the director of the department of corrections and rehabilitation and shall be known as the director of the division of juvenile services. On the effective date of this Act, each child committed to the custody of the state youth authority will, by operation of law, be committed to the custody of the division of juvenile services subject to the order committing the child.

SECTION 4. AMENDMENT. Section 27-21-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-02. State youth authority Division of juvenile services - Powers and duties. The state youth authority division of juvenile services shall be the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts. Upon committing a child to the custody of the state youth authority division of juvenile services, the committing judge, the juvenile supervisor, juvenile court, law enforcement officers, and other public officials shall make available to the state youth authority division of juvenile services all pertinent data in their possession with respect to the child. Upon taking custody or if authorized by the court prior to receiving custody of a child, the state youth authority division of juvenile services shall process the child through such diagnostic testing and evaluation programs as may be necessary to determine his disposition the treatment and rehabilitation which is in his the best interest of the child and in the best interest of the state. In doing so, the state youth authority division of juvenile services may utilize the psychological, addiction, psychiatric, vocational, medical, and other diagnostic and testing services that are available, examine all the pertinent circumstances, and review the reasons for his the child's commitment. Upon completion of the diagnostic testing and evaluation program, the state youth authority of a child committed to its custody, the division shall make disposition under subsection 1, 2, or 3 of this section and inform the court of its disposition. Upon completion of the diagnostic testing and evaluation of a child not in its custody, the division shall make develop and recommend to the juvenile court an individualized treatment and rehabilitation plan for the child. This plan must include recommendations for the disposition of the child as follows:

1. Place him Placement in the custody care of his the child's parent, relative, guardian, or in a foster home or suitable private institution licensed by the state for the care or treatment and rehabilitation of children;
2. Place him Placement in the custody care of the state industrial school or in a vocational, training, or similar other treatment and rehabilitation institution for children or young adults within this state; or

3. Place him Placement in the custody care of a vocational, training, or similar other treatment and rehabilitation institution for children or young adults in another state in the event that adequate facilities for his the child's treatment and rehabilitation are not available within this state and the committing judge juvenile court concurs in the placement.

Subject to the authority of the committing court and the Uniform Juvenile Court Act, the state youth authority shall retain jurisdiction of the child until he reaches the age of eighteen years, and may change placement of the child at any time it appears to be in his best interest and in the best interest of the state, except when the child is placed in the custody, temporary or otherwise, of the state industrial school, in which case, any change of placement or custody is subject to the recommendation of the superintendent of the industrial school and the approval of the director of institutions.

SECTION 5. A new section to chapter 27-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Placement procedures. The division of juvenile services shall retain custody of the child as granted by the authority of the committing court and the Uniform Juvenile Court Act. The court in an order committing the child to the division may require court approval before a placement may be made to a more restrictive setting. All other placements may be made by the division at any time it appears to be in the child's best interest and in the best interest of the state. A child, child's parent, or guardian who objects to a placement to a more restrictive setting made by the division may request a placement hearing to review the placement. In an emergency, or for reasons of safety and security, the division may temporarily place a child in an appropriate facility. A child, child's parent, or guardian who objects to the temporary placement may request a placement hearing to review the placement determined by the division.

SECTION 6. AMENDMENT. Section 27-21-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-03. Temporary custody care. The state youth authority division of juvenile services may, if other means are unavailable, place a child committed to its custody in the temporary custody care of the state industrial school, a vocational, training, medical, psychiatric, psychological, or other institution suitable for children within this state for not more than sixty days, in order to provide for diagnostic testing and evaluation and other assessments pending disposition under section 27-21-02.

SECTION 7. AMENDMENT. Section 27-21-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-05. State youth authority Division of juvenile services to report to the committing judge juvenile court. Within ten days after the completion of diagnostic testing and evaluation of a child, the director division shall report the results thereof develop and recommend an individualized treatment and rehabilitation plan to the committing judge and the disposition made, if any, other than a juvenile court unless the recommendation is temporary placement care pursuant to section 27-21-03. The director division shall review each placement and the current status of each child committed to the division at least every three months to determine

whether a change in placement or program is necessary for the continued accomplishment of the treatment or and rehabilitation plan of the child, and shall report ~~his~~ the findings and dispositions to the advisory board and the department of human services committing juvenile court.

SECTION 8. AMENDMENT. Section 27-21-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-06. State youth authority Division of juvenile services to contract with facilities in other states for custody care.

1. The state youth authority division of juvenile services is hereby empowered to contract and make placements with the appropriate agencies or ~~department~~ departments of other states in order that they may receive custody care of committed children for vocational, training, or other treatment and rehabilitation purposes contemplated by this chapter. Before contracting with any agency or department of another state, the director of the division, or the director's designee, shall assess the facilities that are offered by such department or agency, and, after contracting, forward to each district judge in the state the committing juvenile court a summary on the facilities that are furnished by such agency or department and such other information pertaining thereto as may reasonably be requested.
2. Any contract or placement entered into shall provide for:
 - a. Its duration.
 - b. Payments to be made to the other state for maintenance and extraordinary medical and dental expenses of children received, and for participation in or receipt of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.
 - c. Participation in programs of youth employment, the crediting of payments received by children on account thereof, and the crediting of proceeds from the disposal of any products resulting from such programs.
 - d. Transportation of children to and from the other state.
 - e. The right of the director, or ~~his~~ the director's designee, to have at all reasonable times access to any institution in which a child in its custody care may be committed placed, either temporarily or otherwise, for the purpose of inspecting the facilities thereof and visiting the child under commitment to the state youth authority division of juvenile services.
 - f. The submission of reports by each institution in accordance with section 27-21-07 concerning the progress of treatment or rehabilitation of each child placed in its custody care.
 - g. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of both states.

Children under the jurisdiction custody of the state youth authority division of juvenile services who are in the custody care of an institution of another state shall at all times be subject to the jurisdiction of this state, and at any time may be removed therefrom for change of placement as provided in section 27-21-02. All children placed in custody care in another state shall be treated in a reasonable and humane manner and shall be treated equally with other children placed in custody care in the same institution. Placement of a child in another state shall not deprive him the child of any legal rights he the child would have had if placed in an institution in this state.

SECTION 9. AMENDMENT. Section 27-21-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-07. Report by custodian caretaker to state youth authority division of juvenile services. Any person, agency, department, or vocational, training, or other treatment and rehabilitation institution, either within or without outside of this state, that has received custody care of a child under this chapter, other than temporary custody care, shall:

1. Submit to the director of the division, in such form as he the director may reasonably prescribe, a quarterly report of the progress of the child; and
2. Submit to the director of the division, as required by him and in such form as he the director may reasonably prescribe, any interim report of the progress of the juvenile he child that the director deems necessary in the interest of the child.

Quarterly and interim reports shall be made available to the committing juvenile court, the advisory board, and the department of human services.

SECTION 10. AMENDMENT. Section 27-21-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-08. Planning - Development — Assessment of existing facilities. The state youth authority division of juvenile services shall provide treatment and rehabilitation programs and services and aid in the development of new or improved means of prevention, control, treatment and rehabilitation supervision, and management of children committed to its custody. It shall utilize research and other information available from all sources and, if necessary, initiate studies to aid in the general planning and development of appropriate programs for the placement, treatment and rehabilitation of children. The state youth authority shall assess existing programs and activities within the state, and keep informed of current developments relating to placement, treatment and rehabilitation of children.

SECTION 11. AMENDMENT. Section 27-21-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-21-09. Cooperation with other agencies and departments of the state - Right to inspect facilities of state institutions - Right to examine children. The state youth authority division of juvenile services shall cooperate with and receive the cooperation of the board of pardons, the department of human services, the director of institutions, the state parole board department of public instruction, the department of vocational education, the juvenile courts, the state department of health and

consolidated laboratories, and such other agencies and departments of the state as may be necessary to carry out the objectives of this chapter. The ~~state youth authority~~ division of juvenile services may inspect at all reasonable times the facilities of those institutions within the state it is authorized to utilize under this chapter, and may examine any child it has placed in the ~~custody~~ care of such institution, and may contract with public and private agencies to provide services for them or to retain from them required services to meet the purpose and objective of this chapter.

SECTION 12. REPEAL. Sections 27-21-04 and 27-21-10 of the North Dakota Century Code are hereby repealed.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 158

HOUSE BILL NO. 1052
(Legislative Council)
(Interim Judiciary Committee)

CRIMINAL SENTENCING

AN ACT to create and enact four new sections to chapter 12.1-32 of the North Dakota Century Code, relating to suspended execution and deferred imposition of sentence and lengths of periods of probation, release, discharge, or termination of probation, records and statistical data regarding suspended execution and deferred imposition of sentence, and when a probationer is deemed an escapee; to amend and reenact sections 12-59-18, 12.1-32-02, 12.1-32-07, subsection 4 of section 12.1-32-09, sections 12.1-32-14, 29-26-22, 39-06-30, 39-06-42, 39-07-11, subdivision e of subsection 4 of section 39-08-01, sections 40-05-06, 40-18-13, and 62.1-02-01 of the North Dakota Century Code, relating to references to suspended execution or suspended imposition of sentence, sentencing alternatives in criminal cases, and restoration of property; and to repeal chapter 12-53 and section 12.1-32-06 of the North Dakota Century Code, relating to suspended sentences and incidents and conditions of probation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-59-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-59-18. Orders not reviewable - Exception. Orders of the board ~~shall~~ are not ~~be~~ reviewable except as to compliance with the terms of this chapter or ~~chapter 12-53 subsection 3 or 4 of section 12.1-32-02.~~

* SECTION 2. AMENDMENT. Section 12.1-32-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-32-02. Sentencing alternatives - Credit for time in custody - Diagnostic testing.

1. Every person convicted of an offense who is sentenced by the court ~~shall~~ must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:

- a. Payment of the reasonable costs of ~~his~~ the person's prosecution.
- b. Probation.
- c. A term of imprisonment, including intermittent imprisonment:

* NOTE: Section 12.1-32-02 was also amended by section 1 of Senate Bill No. 2340, chapter 172.

- (1) In a state correctional facility, a regional corrections center, a county jail, or in the state farm in accordance with section 12-51-07, if convicted of a felony or a class A misdemeanor.
 - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
- d. A fine.
 - e. Restitution for damages resulting from the commission of the offense.
 - f. Restoration of damaged property, or other appropriate work detail.
 - g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
 - h. Commitment to any other facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.

Sentences Except as provided by section 3 of this Act, sentences imposed under this subsection ~~shall~~ may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection ~~shall~~ must not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences A sentence under subdivisions subdivision e or f ~~shall~~ must be imposed in the manner provided in section 12.1-32-08. This subsection shall not be construed to prohibit utilization of sections 12-53-13 through 12-53-19, relating to suspension of imposition of sentence, nor shall this subsection limit the conditions which can be imposed on a probationer under section 12-53-14.

2. Credit against any sentence to a term of imprisonment ~~shall~~ must be given by the court to a defendant for all time spent in custody as a result of the criminal charge for which the sentence was imposed, or as a result of the conduct on which such charge was based. "Time spent in custody" ~~shall include~~ includes time spent in custody in a jail or mental institution for the offense charged, whether that time is spent prior to trial, during trial, pending sentence, or pending appeal.
3. Superseded by N.D.R.Crim.P., Rule 35. A court may suspend the execution of all or a part of the sentence imposed. The court shall place the defendant on probation during the term of suspension.
4. A court, upon application or its own motion, may defer imposition of sentence. The court must place the defendant on probation during the period of deferment. An order deferring imposition of sentence is reviewable upon appeal from a verdict or judgment. In any subsequent prosecution, for any other offense, the prior

conviction for which imposition of sentence is deferred may be pleaded and proved, and has the same effect as if probation had not been granted or the information or indictment dismissed under section 5 of this Act.

5. A court may, prior to imposition of sentence, order the convicted offender committed to an appropriate licensed public or private institution for diagnostic testing for such period of time as may be necessary, but not to exceed thirty days. The court may, by subsequent order, extend the period of commitment for not to exceed thirty additional days. The court may also order such diagnostic testing without ordering commitment to an institution. Validity of a sentence ~~shall~~ must not be challenged on the ground that diagnostic testing was not performed pursuant to this subsection.
- 5- 6. All sentences imposed ~~shall~~ must be accompanied by a written statement by the court setting forth the reasons for imposing the particular sentence. The statement ~~shall~~ must become part of the record of the case.
- 6- 7. If an offender is sentenced to a term of imprisonment, that term of imprisonment commences at the time of sentencing, unless, upon motion of the defendant, the court orders the term to commence at some other time.
- 7- 8. Unless otherwise specifically authorized in the statute defining the offense, ~~no~~ a court ~~shall~~ may not include a minimum term of imprisonment as part of its sentence.
- 8- 9. A court may commit a female offender to the state penitentiary or other suitable facility under the same minimum security restrictions and with the same privileges as state farm inmates when the sentence imposed is more than thirty days but not more than one year.
- 9- 10. A person who is convicted of a felony who is and sentenced to imprisonment for not more than one year ~~shall be~~ is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment and any term of probation imposed as part of the sentence.

SECTION 3. A new section to chapter 12.1-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

Length and termination of probation - Additional probation for violation of conditions.

1. Except as provided in this section, the length of the period of probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:
 - a. The order imposing probation;
 - b. The defendant's release from incarceration; or

- c. Termination of the defendant's parole.
2. In cases where the defendant has pled or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
3. In felony cases, in consequence of violation of probation conditions, the court may impose an additional period of probation not to exceed five years. The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment.
4. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
5. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes.

SECTION 4. AMENDMENT. Section 12.1-32-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.

1. When the court imposes probation upon conviction for a felony, the court shall place the defendant under the supervision and management of the pardon board. In all other cases, the court may place the defendant under the supervision and management of the pardon board or other responsible party selected by the court.
2. The conditions of probation ~~shall~~ must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist ~~him~~ the defendant to do so. The court shall provide as an explicit condition of every ~~sentence~~ to probation that the defendant not commit another offense during the period for which the ~~sentence~~ probation remains subject to revocation.
- ~~a-~~ 3. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate, and may include any one or more of the following:
 - a. Work faithfully at a suitable employment or faithfully pursue a course of study or of vocational training that will equip ~~him~~ the defendant for suitable employment.
 - b. Undergo available medical or psychiatric treatment and remain in a specified institution ~~is~~ if required for that purpose.
 - c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.

- d. Support his the defendant's dependents and meet other family responsibilities.
 - e. Make restitution or reparation to the victim of his the defendant's conduct for the damage or injury which was sustained, or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of the sentence probation, the court shall proceed as provided in section 12.1-32-08.
 - f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05, except when imposition of sentence is deferred.
 - g. Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the court or probation officer.
 - h. Refrain from excessive use of alcohol, or any use of narcotics or of another dangerous or abusable drug without a prescription.
 - i. Permit the probation officer to visit him the defendant at reasonable times at his the defendant's home or elsewhere.
 - j. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.
 - k. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.
 - l. Report to a probation officer at reasonable times as directed by the court or the probation officer.
 - m. Submit to a medical examination or other reasonable testing for the purpose of determining his the defendant's use of narcotics, marijuana, or other controlled substance whenever required by a probation officer.
 - n. Refrain from associating with known users or traffickers in narcotics, marijuana, or other controlled substances.
 - o. Submit his the defendant's person, place of residence, or vehicle to search and seizure by a probation officer at any time of the day or night, with or without a search warrant.
 - p. Serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted or one year, whichever is less.
- 3- 4. When a defendant is sentenced the court imposes a sentence to probation, he shall probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the defendant must be given a certificate explicitly setting forth the conditions on which he the defendant is being released.

- 4- 5. The court may, upon notice to the probationer and with good cause, may modify or enlarge the conditions of a sentence to probation at any time prior to the expiration or termination of the period for which the sentence probation remains conditional. If the defendant violates a condition of probation at any time prior to the expiration or termination of the period, the court may continue him the defendant on the existing sentence probation, with or without modifying or enlarging the conditions, or if such continuation, modification, or enlargement is not appropriate, may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.
- 5- 6. The court may continue or modify probation conditions or revoke probation for a violation of probation conditions occurring before the expiration or termination of the period of probation notwithstanding that the order of the court is imposed after the expiration or termination has occurred. The petition for revocation must be issued within sixty days of the expiration or termination of probation.
7. Jurisdiction over a probationer may be transferred from the court which that imposed the sentence to another court of this state, with the concurrence of both courts. Retransfers of jurisdiction may also occur in the same manner. The court to which jurisdiction has been transferred under this subsection shall be authorized to may exercise all powers permissible under this chapter over the defendant.

SECTION 5. A new section to chapter 12.1-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

Release, discharge, or termination of probation.

1. Whenever a person has been placed on probation and in the judgment of the court that person has satisfactorily met the conditions of probation, the court shall cause to be issued to the person a final discharge from further supervision.
2. Whenever a person has been placed on probation pursuant to subsection 4 of section 12.1-32-02, the court at any time, when the ends of justice will be served, and when reformation of the probationer warrants, may terminate the period of probation and discharge the person so held. Every defendant who has fulfilled the conditions of probation for the entire period, or who has been discharged from probation prior to termination of the probation period, may at any time be permitted in the discretion of the court to withdraw the defendant's plea of guilty. The court may in its discretion set aside the verdict of guilty. In either case, the court may dismiss the information or indictment against the defendant. The court may, upon its own motion or upon application by the defendant and before dismissing the information or indictment, reduce to a misdemeanor a felony conviction for which the plea of guilty has been withdrawn or set aside. The defendant must then be released from all penalties and disabilities resulting

from the offense or crime of which the defendant has been convicted except as provided by section 62.1-02-01.

SECTION 6. A new section to chapter 12.1-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

Records and filing of papers.

1. Whenever the court orders that a person convicted of a felony is to be placed on probation, the clerk of the court in which the order is entered immediately shall make full copies of the judgment or order of the court with the conditions of probation and shall certify the same to the clerk of the pardon board. Upon the disposition of any criminal case, the clerk of court shall transmit to the pardon board statistical data, in accordance with rules adopted by the board, regarding all defendants whether found guilty or discharged.
2. Whenever imposition of sentence is deferred and, pursuant to section 5 of this Act, the plea of guilty is withdrawn by the defendant or the verdict of guilty is set aside by the court, the clerk of court shall file all papers, including the findings and final orders in proceedings under section 5 of this Act, and shall note the date of filing on the papers. The records and papers are subject to examination by the clerk, a judge of the court, the juvenile commissioner, probation officers, the defendant or defendant's counsel, and the state's attorney. Others may examine the records and papers only upon the written order of a judge of the court.

SECTION 7. A new section to chapter 12.1-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

When probationer deemed escapee and fugitive from justice. A probationer is considered an escapee and a fugitive from justice if the probationer leaves the jurisdiction before the expiration of the probationary period without permission of the court or the pardon board.

SECTION 8. AMENDMENT. Subsection 4 of section 12.1-32-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing ~~shall~~ must be held, before sentence is imposed, by the court sitting without a jury. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 4 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing, and notice thereof ~~shall~~ must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if ~~he~~ the defendant is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information

obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant ~~shall be~~ is entitled to compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment ~~shall be~~ is prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2. The court shall place in the record its findings including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

SECTION 9. AMENDMENT. Section 12.1-32-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-32-14. Restoration of property or other work to be required of certain offenders. Other provisions of this chapter notwithstanding, whenever a person convicted of criminal mischief shall be placed on probation pursuant to section 12.1-32-02 or 12.1-32-07, the court shall include as a condition of that probation the requirement that the person perform restoration or other assigned work as specified in subdivision e of subsection ~~2~~ 3 of section 12.1-32-07.

SECTION 10. AMENDMENT. Section 29-26-22 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-26-22. Judgment for fines, costs, and court administration fee - Statement to be filed by court - Docketing and enforcement. In all cases of conviction, a court administration fee of up to twenty-five percent of the maximum allowable fine for the offense may be taxed against the defendant in lieu of the assessment of court costs. If the court does assess costs as part of its sentence, the court shall include in the judgment the facts justifying the amount assessed. When a fine is imposed and suspended or the imposition of a sentence is ~~suspended pursuant to chapter 12-53 deferred under subsection 4 of section 12.1-32-02~~, the court administration fee may be taxed against the defendant and twenty-five percent of the fee collected must be added to the fund for the maintenance of common schools pursuant to section 2 of article IX of the Constitution of North Dakota. A judgment that the defendant pay a fine, costs, or court administration fee, or any combination thereof, may be docketed, and thereafter constitutes a lien upon the real estate of the defendant in like manner as a judgment for money rendered in a civil action. The court may allow the defendant to pay any assessed costs or administrative fee in installments. When a defendant is assessed costs or administrative fees, the court may not impose at the same time an alternative sentence to be served if the costs are not paid.

SECTION 11. AMENDMENT. Section 39-06-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-30. Conviction - Meaning and effect. For purposes of this title the term "conviction" means a final order or judgment of conviction by the North Dakota supreme court or any lower court having jurisdiction provided that no appeal is pending and the time for filing a notice of appeal has elapsed. Subject to the filing of an appeal, a conviction ~~shall include~~ includes those instances when:

1. A sentence is imposed and suspended;
2. Imposition of a sentence is suspended deferred under ~~chapter 12-53~~ subsection 4 of section 12.1-32-02; or
3. There is a forfeiture of bail or collateral deposited to secure a defendant's appearance in court and the forfeiture has not been vacated.

SECTION 12. AMENDMENT. Section 39-06-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-42. Penalty for driving while license suspended or revoked - Impoundment of vehicle number plates - Authority of cities.

1. Except as provided in chapters 39-16 and 39-16.1 and section 39-06.1-11, any person who drives a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state while that person's license or privilege so to do is suspended or revoked is guilty of a class B misdemeanor.
2. If the suspension or revocation was imposed for violation of section 39-08-01 or equivalent ordinance or was governed by section 39-06-31 or chapter 39-20, the sentence must be at least four consecutive days' imprisonment and such fine as the court deems proper. The execution of sentence and may not be suspended or the imposition of sentence may not be suspended deferred under chapter 12-53 subsection 3 or 4 of section 12.1-32-02. Forfeiture of bail is not permitted in lieu of the defendant's personal appearance in open court for arraignment on a charge under this subsection.
3. In addition to any other punishment imposed, the court may order the number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded by the sheriff for the duration of the period of suspension or revocation. When a period of suspension has been extended under subsection 5 of section 39-06-17, the court may order the number plates to be impounded in accordance with this subsection. The impounded number plates may be released, upon order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title to the motor vehicle issued by the registrar of motor vehicles.
4. A city may, by ordinance, authorize its municipal judge to order impoundment of motor vehicle number plates in the manner provided in subsection 3.

SECTION 13. AMENDMENT. Section 39-07-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-07-11. Magistrate to keep record of convictions of traffic violations - Records of conviction to be forwarded to licensing authority. Every magistrate, as defined in section 29-01-14, shall keep a full record of every case brought before the magistrate in which a person is charged with a violation of chapter 12.1-16 resulting from the operation of a motor vehicle, or of any provision of chapters 39-05 through 39-13, 39-21, and 39-24, or with a violation of a municipal ordinance which is equivalent to any of the provisions of the foregoing statutes. Within ten days after a final order or judgment of conviction, for a violation not subject to disposition and reporting under chapter 39-06.1, by the North Dakota supreme court or any lower court having jurisdiction, provided that no appeal is pending and the time for filing a notice of appeal has elapsed, the magistrate then having jurisdiction shall forward a report of that fact to the licensing authority. If the reported violation caused another person's serious bodily injury, as defined in section 12.1-01-04, the magistrate shall include that information in the report. Any conviction for which a report is received by the licensing authority may be deemed by the licensing authority to be final, and the licensing authority may take any action authorized by law to be taken based on the report. Subject to the filing of an appeal, a conviction includes those instances when:

1. A sentence is imposed and suspended;
2. Imposition of a sentence is ~~suspended~~ deferred under ~~chapter 12-53~~ subsection 4 of section 12.1-32-02; or
3. There is a forfeiture of bail or collateral deposited to secure a defendant's appearance in court and the forfeiture has not been vacated.

SECTION 14. AMENDMENT. Subdivision e of subsection 4 of section 39-08-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- e. ~~A sentence~~ The execution or imposition of sentence under this section may not be suspended or deferred under ~~chapter 12-53~~ subsection 3 or 4 of section 12.1-32-02 except that a fine or a sentence of imprisonment may be suspended in any of the following instances:

- (1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.
- (2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service, ~~which. The execution of the sentence or may not be suspended nor the imposition of sentence may not be suspended~~ deferred under ~~chapter 12-53~~ subsection 3 or 4 of section 12.1-32-02.

SECTION 15. AMENDMENT. Section 40-05-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-05-06. City fines and penalties limited.

1. Except as provided in subsections 2 and 3, the fine or penalty for the violation of any ordinance, resolution, or regulation of a city ~~shall~~ may not exceed five hundred dollars, and the imprisonment ~~shall~~ may not exceed thirty days for one offense.
2. For every violation of a city ordinance regulating the operation or equipment of motor vehicles or regulating traffic, except those ordinances listed in section 39-06.1-05, a fee may be established, by ordinance, which shall not exceed the limits, for equivalent categories of violations, set forth in section 39-06.1-06.
3. For every violation of a city ordinance prohibiting shoplifting, vandalism, criminal mischief, or malicious mischief, the penalty may not exceed a fine of one thousand dollars, imprisonment for thirty days, or both such fine and imprisonment.

This section ~~shall not be construed to~~ does not prohibit the utilization of the sentencing alternatives, other than a fine or imprisonment, provided by section 12.1-32-02 for the violation of a city ordinance, nor ~~shall~~ does this section limit the use of deferred or suspended sentences pursuant to chapter ~~12-53~~ under subsections 3 and 4 of section 12.1-32-02.

SECTION 16. AMENDMENT. Section 40-18-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-13. Sentencing alternatives - Suspension of sentence or imposition of sentence. Subject to section 40-05-06, a municipal judge may use the sentencing alternatives provided by section 12.1-32-02 and may suspend any sentence the judge imposes or ~~suspend~~ defer the imposition of any sentence during the good behavior of any person adjudged to have committed an offense, or for other reasonable cause, under chapter ~~12-53~~ subsection 3 or 4 of section 12.1-32-02, except that a municipal judge may not suspend a sentence or the imposition of sentence for driving a motor vehicle in violation of an operator's license suspension, revocation, or restriction or for a violation of section 39-08-01 or equivalent ordinance if that suspension of sentence or suspension of the imposition of sentence is prohibited under ~~section~~ sections 39-06-17, ~~section~~ 39-06-42, or chapter 39-08.

* SECTION 17. AMENDMENT. Section 62.1-02-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

62.1-02-01. Who not to possess firearms - Penalty.

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control for a period of ten years from the date of conviction or release from incarceration or probation, whichever is the latter.
2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed

* NOTE: Section 62.1-02-01 was also amended by section 1 of Senate Bill No. 2105, chapter 762.

while using or possessing a firearm or dangerous weapon, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control for a period of five years from the date of conviction or release from incarceration or probation, whichever is the latter.

3. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in North Dakota or elsewhere by a court of competent jurisdiction, as a mentally ill person as defined in section 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. This limitation does not apply to a person who has not suffered from the disability for the previous three years.
4. A person under the age of eighteen years may not possess a handgun except that such a person may, while under the direct supervision of an adult, possess a handgun for the purposes of firearm safety training, target shooting, or hunting.

A person who violates subsection 1 or 2 is guilty of a class C felony, and a person who violates subsection 3 or 4 is guilty of a class A misdemeanor. For the purposes of this section, "conviction" means determination by a jury or court that a person committed one of the above-mentioned crimes even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02 or deferred imposition of sentence in accordance with ~~sections 12-53-13 through 12-53-19~~ subsection 4 of section 12.1-32-02, placed the defendant on probation, granted a conditional discharge in accordance with section 19-03.1-30, or the defendant's conviction has been reduced in accordance with subsection ~~9~~ 10 of section 12.1-32-02 or section 5 of this Act.

SECTION 18. REPEAL. Chapter 12-53 and section 12.1-32-06 of the North Dakota Century Code are hereby repealed.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 159

SENATE BILL NO. 2110
(Committee on Judiciary)
(At the request of the Attorney General)

CRIMINAL RECORD INFORMATION

AN ACT to amend and reenact subsections 2 and 4 of section 12-60-16.1, subsections 2 and 3 of section 12-60-16.2, and section 12-60-16.4 of the North Dakota Century Code, relating to criminal history record information definitions and reportable offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 4 of section 12-60-16.1 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. "Criminal history record information" includes ~~data concerning a reportable event which the bureau is required or permitted to retain under sections 12-60-16.1 through 12-60-16.4~~ information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other criminal charges, any dispositions arising therefrom, sentencing, correctional supervision, and release.
4. "Criminal justice agency" means any government law enforcement agency or entity authorized by law to provide information regarding, or to exercise the powers of, arrest, detention, prosecution, ~~adjudication,~~ correctional supervision, rehabilitation, or release of persons suspected in, charged with, or convicted of, a crime.

SECTION 2. AMENDMENT. Subsections 2 and 3 of section 12-60-16.2 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. The ~~state's~~ prosecuting attorney of each county shall notify the bureau of all charges filed, including all those added after the filing of a criminal court case, and whether charges were not filed in criminal cases for which the bureau has a record of an arrest.
3. After the court pronounces sentence for a reportable offense, and if the person being sentenced has not been fingerprinted with respect to that case, the ~~state's~~ prosecuting attorney shall ask the court to order a law enforcement agency to fingerprint that person. If the court determines that the person being so sentenced has not previously been fingerprinted for the same case, the court shall order the fingerprints taken. The law enforcement agency shall forward the fingerprints to the bureau.

SECTION 3. AMENDMENT. Section 12-60-16.4 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-60-16.4. Criminal history record information - Reportable offenses. Criminal justice agencies shall report to the bureau reportable events for each felony and for each of the following ~~misdemeanor~~ offenses:

1. Class A and B misdemeanor offenses in sections 6-08-16 and 6-08-16.1.
2. Class A misdemeanor offenses included in title 12.1.
3. Class A and B misdemeanor offenses in chapters 19-03.1 and 19-03.2, and in section 12-47-21.
4. Class B misdemeanor offenses in sections 12.1-17-01, 12.1-20-12.1, 12.1-21-05, 12.1-21-06, 12.1-23-05, and 12.1-29-03.
5. Class A misdemeanor offenses in sections 53-06.1-16 and 53-06.1-16.1.
6. Class A misdemeanor offenses in title 62.1.
7. Municipal ordinance violations that are equivalent to misdemeanors listed in subsections 1 through 6.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 160

HOUSE BILL NO. 1365
(Representative Wentz)
(Senator Holmberg)

SEX OFFENSE CRIMINAL RECORD DISSEMINATION

AN ACT to amend and reenact section 12-60-16.6 of the North Dakota Century Code, relating to the dissemination of criminal history record information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-60-16.6 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-60-16.6. Criminal history record information - Dissemination to parties not described in section 12-60-16.5. Only the bureau may disseminate criminal history record information to parties not described in section 12-60-16.5. The dissemination may be made only if all the following requirements are met:

1. The information has not been purged or sealed.
2. The information is of a conviction, including a conviction for violating section 12.1-20-03, 12.1-20-04, 12.1-20-06.1, or 12.1-20-11 notwithstanding any disposition following a deferred imposition of sentence; or the information is of a reportable event occurring within one year preceding the request.
3. The request is written and contains:
 - a. The name of the requester.
 - b. The name of the record subject.
 - c. At least two items of information used by the bureau to retrieve criminal history records, including:
 - (1) The fingerprints of the record subject.
 - (2) The state identification number assigned to the record subject by the bureau.
 - (3) The social security number of the record subject.
 - (4) The date of birth of the record subject.
 - (5) A specific reportable event identified by date and either agency or court.
4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 161

SENATE BILL NO. 2329
(Senators Holmberg, Robinson)
(Representatives Lindgren, Carlson)

TOWNSHIP CONSTABLE ELIMINATION

AN ACT to amend and reenact sections 12-60-17, 28-01-17, 29-05-10, 32-22-36, 58-04-10, 58-05-02, 58-05-05, 58-05-07, 58-07-03, 58-15-03, and 58-15-04 of the North Dakota Century Code, relating to the office of township constable; and to repeal sections 58-10-03, 58-10-04, and 58-10-05 of the North Dakota Century Code, relating to township constables.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-60-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-60-17. Superintendent to make rules and regulations. The superintendent, pursuant to chapter 28-32, shall make and promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary and proper for the efficient performance of the bureau's duties. Such rules and regulations shall be printed and forwarded to each state's attorney, sheriff, ~~constable~~, marshal, or other peace officer, and each of said officers shall assist the superintendent in the performance of his duties by complying with such rules and regulations.

SECTION 2. AMENDMENT. Section 28-01-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-17. Actions having three-year limitations - Exceptions. The following actions must be commenced within three years after the claim for relief has accrued:

1. An action against a sheriff, or coroner, or ~~constable~~ upon a liability incurred by the doing of an act in his official capacity and by virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution. However, this subsection does not apply to an action for an escape.
2. An action upon a statute for a penalty or forfeiture, if the action is given to the party aggrieved, or to such party and the state, unless the statute imposing it prescribes a different limitation.
3. An action for the foreclosure of a mechanic's lien.

SECTION 3. AMENDMENT. Section 29-05-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-05-10. "Peace officer" defined. A peace officer is a sheriff of a county or his deputy, or a coroner, ~~constable~~, marshal, or policeman of a township or city, or any state or federal law enforcement officer.

SECTION 4. AMENDMENT. Section 32-22-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-22-36. Prisoners shall not be removed from one prison to another - Exceptions. Any person being committed to any prison, or in custody of any officer, sheriff, jailer, keeper, or other person, or his under officer or deputy, for any criminal or supposed criminal matter, shall not be removed from such prison or custody, into another prison or custody, unless it is by habeas corpus or some other legal writ, or when the prisoner shall be delivered to ~~the constable~~ a peace officer or other inferior officer, to be carried to some common jail, or shall be removed from one place to another within the county, in order to procure his discharge or trial in due course of law, or in a case of sudden fire, infection, or other necessity, or when the sheriff shall commit such prisoner to the jail of an adjoining county for the want of a sufficient jail in his own county, as is provided in the chapters concerning jails and jailers, or when the prisoner, in pursuance of law, may be claimed or demanded by the executive of the United States, or the executive of any other state. If any person, after commitment as aforesaid, shall make out, sign, or countersign any warrant or warrants for such removal, except as before excepted, then he shall forfeit to the prisoner or aggrieved party, a sum not exceeding three hundred dollars, to be received by the prisoner or party aggrieved in the manner hereinafter mentioned.

SECTION 5. AMENDMENT. Section 58-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-04-10. Officers to be elected by ballot. The supervisors, treasurer, and clerk, ~~and constables~~ in each township shall be elected by ballot. All other officers, if not otherwise provided by law, shall be chosen either by yeas and nays or by a division as the electors determine.

* SECTION 6. AMENDMENT. Section 58-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-05-02. Officers of a township - Terms of office. The elected officers of a civil township shall be:

1. Three supervisors.
2. One township clerk.
3. One assessor except as herein provided.
4. One treasurer.

~~5. Two constables.~~

One supervisor shall be elected at each annual township meeting and shall hold his office for a term of three years. The other elective officers shall be elected every two years and shall hold their respective offices for a term of two years. Each officer shall serve until his successor is elected and qualified. The same person may hold the offices of township clerk and treasurer if a majority of the electors present vote in favor of the merging

* NOTE: Section 58-05-02 was also amended by section 3 of House Bill No. 1510, chapter 737.

of such offices at the annual township meeting. The person elected to fill the merged office shall perform all of the duties required of both the township clerk and treasurer except as otherwise specifically provided by law. If a majority of the electors present and voting at an annual township meeting vote in favor of making the office of assessor appointive, the board of township supervisors shall appoint a township assessor for a four-year term of office, the first term commencing on January 1, 1974. In lieu of electing or appointing a township assessor, the board of township supervisors, if authorized by a majority of the electors present and voting at an annual township meeting, may on behalf of the township contract with the county in which the township is located or with any other political subdivision or with any individual to perform the duties of and have the powers of the township assessor. The length and terms of such a contract shall be negotiated by the board of township supervisors with the governing body of the county or other political subdivision or with the individual, as the case may be, and the township is hereby authorized to make such payments as may be provided for in the contract. The electors of any township in which the office of township assessor was abolished prior to July 1, 1973, shall, at the next annual township meeting, elect a township assessor or authorize the board of township supervisors to appoint a township assessor or to contract for the making of the assessment as hereinbefore provided. The township electors may by majority vote of those present and voting at an annual township meeting change the previously adopted method of providing for the assessment to either of the other two methods authorized in this section but such change shall not become effective until expiration of the term of office of the assessor or until a vacancy occurs in the office of assessor or until expiration of the contract for making the assessments, whichever is applicable according to the method of providing for the assessment that was previously adopted.

SECTION 7. AMENDMENT. Section 58-05-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-05-05. Bonds of officers. Each person elected or appointed to the office of township clerk, assessor, or treasurer, ~~or constable~~ within ten days after he is notified of his election or appointment, and before entering upon the duties of his office, shall be bonded for the faithful discharge of his duties in the same manner as other civil officers are bonded and in the following amounts:

1. The bond of the township clerk shall be in such amount as may be determined by the board of township supervisors.
2. The bond of the treasurer shall be in such amount as may be determined by the board of township supervisors and shall be not less than the maximum amount of money that shall be subject to such treasurer's control at any one time.
3. The bond of the assessor shall be in the amount of one thousand dollars.
- ~~4. The bond of each constable shall be in the amount of five hundred dollars.~~

Such bonds, or the certificates issued in lieu thereof, shall be filed in the office of the township clerk.

SECTION 8. AMENDMENT. Section 58-05-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-05-07. Officers to take oath. Each person elected or appointed to the office of supervisor, township clerk, assessor, treasurer, ~~constable~~, or township overseer of highways, within ten days after he is notified of his election or appointment, shall take and subscribe the oath prescribed in section 4 of article XI of the Constitution of North Dakota. If the oath shall be administered by the township clerk, no fee shall be charged therefor.

SECTION 9. AMENDMENT. Section 58-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-07-03. Duties of township clerk. The township clerk shall perform the following duties:

1. Act as clerk of the board of township supervisors and keep in his office a true record of all of its proceedings.
2. File and safely keep all certificates of oaths and bonds required to be kept in his office and all other papers required by law to be filed in his office, and have and keep custody of the record books and papers of the township when no other provision is made therefor by law.
3. Enter in the minutes of the proceedings of each township meeting each order or direction and every rule and regulation adopted at such meeting.
4. File and preserve all accounts audited by the township board or allowed at a township meeting and enter a statement thereof in the township record books.
5. ~~Transmit to the clerk of the district court the name of each constable elected or appointed in his township immediately after the qualification of any such constable.~~
- ~~6.~~ File his bond in the office of the county auditor and his oath and the oath of his deputy, if one is appointed, in the office of the clerk of the district court.
- ~~7.~~ 6. Preserve and record the annual statement of the treasurer, except that in those townships in which the offices of township clerk and treasurer have been merged, the person elected to fill the new office shall file a copy of the annual treasurer's statement with the chairman of the board of township supervisors.
- ~~8.~~ 7. Require all legally elected officers who accept the offices to which they are elected to qualify within the time prescribed by law and in accordance with all other provisions thereof.
- ~~9.~~ 8. Make a record of all statements of the remittances of any township funds from the county treasurer to the township treasurer as such statements are mailed to him by the county treasurer, except that in those townships in which the offices of township clerk and treasurer have been merged, the person elected to fill the new

office shall make a record of all statements of the remittances of any township funds from the county treasurer to the township treasurer and shall file such statements with the chairman of the board of township supervisors.

~~10-~~ 9. Keep an account of the township funds in the same manner as is required of the township treasurer, except that in those townships in which the offices of township clerk and treasurer have been merged, the person elected to fill the office shall keep an account of the township funds and shall report the balance of such funds to the chairman of the board of township supervisors no less frequently than every sixty days.

~~11-~~ 10. Perform all duties imposed upon him under the laws of this state relating to the forming of jury panels.

SECTION 10. AMENDMENT. Section 58-15-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-15-03. Bond of policeman - Removal by board. The policeman appointed to act in an unincorporated townsite shall give a bond and qualify in the same manner as township ~~constables~~ officers. The bond shall be in the amount fixed by the board of township supervisors and shall be filed as other township officers' bonds are filed. The board of township supervisors may remove the police officer whenever it shall deem it expedient.

SECTION 11. AMENDMENT. Section 58-15-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-15-04. Powers, duties, and authority of policeman. A policeman appointed under this chapter shall have the same powers, duties, and authority as ~~the constable of the township~~ a peace officer. During the period for which he is appointed, the policeman shall patrol the unincorporated township each night, and shall guard against fire, theft, and burglary, preserve the peace, and execute the laws of this state.

SECTION 12. REPEAL. Sections 58-10-03, 58-10-04, and 58-10-05 of the North Dakota Century Code are hereby repealed.

Approved March 22, 1989
Filed March 23, 1989

CRIMINAL CODE

CHAPTER 162

HOUSE BILL NO. 1434
(Representatives Scherber, Ring, Martinson)
(Senators Yockim, Olson, Mushik)

CORPORAL PUNISHMENT IN SCHOOLS

AN ACT to create and enact a new section to chapter 15-47 of the North Dakota Century Code, relating to the use of corporal punishment by school district employees; and to amend and reenact subsection 1 of section 12.1-05-05 of the North Dakota Century Code, relating to the use of force by persons responsible for minors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-05-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. ~~A~~ Except as provided in section 2 of this Act, a parent, guardian, or other person responsible for the care and supervision of a minor, or ~~teacher, or~~ other person responsible for the care and supervision of such a minor for a special purpose, or a person acting at the direction of any of the foregoing persons, may use reasonable force upon the minor for the purpose of safeguarding or promoting his welfare, including prevention and punishment of his misconduct, and the maintenance of proper discipline. The force may be used for this purpose, whether or not it is "necessary" as required by subsection 1 of section 12.1-05-07. The force used must not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.

SECTION 2. A new section to chapter 15-47 of the North Dakota Century Code is hereby created and enacted to read as follows:

Corporal punishment - Prohibited - Guidelines. No school district employee may inflict, cause to be inflicted, or threaten to inflict corporal punishment on a pupil. For purposes of this section, corporal punishment means the willful infliction of, willfully causing the infliction of, or willfully allowing the infliction of physical pain on a pupil. This section does not prohibit the use of force that is necessary for a school district employee to quell a physical disturbance threatening physical injury to a person or damage to property, to quell a verbal disturbance, for the purposes of self-defense, for the preservation of order, or to obtain possession of weapons or other dangerous objects within the control of a pupil. Physical pain or discomfort caused by athletic competition or other recreational activities voluntarily engaged in by a pupil is not corporal punishment. Each school board shall develop policies defining expected student behavior and procedures to follow in the event the standard of expected student behavior is violated.

CHAPTER 163

SENATE BILL NO. 2164
(Committee on Judiciary)
(At the request of the Attorney General)

INCEST

AN ACT to amend and reenact section 12.1-20-11 of the North Dakota Century Code, relating to the definition of the crime of incest.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-20-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-20-11. Incest. A person who intermarries, cohabits, or ~~has sexual intercourse~~ engages in a sexual act with another person related to him within a degree of consanguinity within which marriages are declared incestuous and void by section 14-03-03, knowing such other person to be within said degree of relationship, is guilty of a class C felony.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 164

SENATE BILL NO. 2052
(Legislative Council)
(Interim Judiciary Committee)

IMMUNODEFICIENCY VIRUS PROCEDURES

AN ACT to create and enact a new section to chapter 12.1-20 and chapter 23-07.4 of the North Dakota Century Code, relating to transfer of body fluids that may contain the human immunodeficiency virus and public health procedures for persons with the human immunodeficiency virus infection; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 12.1-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

Transfer of body fluid that may contain the human immunodeficiency virus - Definitions - Defenses - Penalty.

1. As used in this section, unless the context otherwise requires:
 - a. "Body fluid" means semen, irrespective of the presence of spermatozoa; blood; or vaginal secretion.
 - b. "Transfer" means to engage in sexual activity by genital-genital contact, oral-genital contact, or anal-genital contact, or to permit the reuse of a hypodermic syringe, needle, or similar device without sterilization.
2. A person who, knowing that that person is or has been afflicted with acquired immune deficiency syndrome, afflicted with acquired immune deficiency syndrome related complexes, or infected with the human immunodeficiency virus, willfully transfers any of that person's body fluid to another person is guilty of a class A felony.
3. It is an affirmative defense to a prosecution under this section that if the transfer was by sexual activity, the sexual activity took place between consenting adults after full disclosure of the risk of such activity and with the use of an appropriate prophylactic device.

SECTION 2. Chapter 23-07.4 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-07.4-01. Public health procedures for persons with human immunodeficiency virus infection. Subject to this chapter, the state health officer or a designee of the state health officer may examine or cause to be

examined a person reasonably believed to be infected with or to have been exposed to the human immunodeficiency virus.

1. Orders or restrictive measures directed to a person with human immunodeficiency virus infection must be used as the last resort when other measures to protect the public health have failed, including all reasonable efforts, which must be documented, to obtain the voluntary cooperation of the person who may be subject to the order or measure. The orders and measures must be applied serially with the least intrusive measures used first. The burden of proof is on the state health officer or a designee of the state health officer to show that specified grounds exist for the issuance of the orders or restrictive measures and that the terms and conditions imposed are no more restrictive than necessary to protect the public health.
2. When the state health officer or a designee of the state health officer knows or has reason to believe, because of medical or epidemiological information, that a person within that official's jurisdiction has human immunodeficiency virus infection and is a danger to the public health, that official may issue an order, according to the following priority, to:
 - a. Require the person to be examined and tested to determine whether the person has human immunodeficiency virus infection;
 - b. Require a person with human immunodeficiency virus infection to report to a qualified physician or health worker for counseling on the disease and for information on how to avoid infecting others; or
 - c. Direct a person with human immunodeficiency virus infection to cease and desist from specified conduct that endangers the health of others, but only if that official has determined that clear and convincing evidence exists to believe that the person has been ordered to report for counseling as provided in subdivision b and continues to demonstrate behavior that endangers the health of others.
3. If a person violates an order issued under subdivision c of subsection 2 and it is shown that the person is a danger to others, the state health officer or a designee of the state health officer may enforce the order by imposing such restrictions upon the person as are necessary to prevent the specific conduct that endangers the health of others. Restrictions must be in writing, setting forth the name of the person to be restricted and the initial period of time, not to exceed ninety days, during which the order remains effective, the terms of the restrictions, and any other conditions as may be necessary to protect the public health. Restrictions must be imposed in the least restrictive manner necessary to protect the public health.
4. Upon issuance of any order under subsection 2 or 3, the state health officer or a designee of the state health officer shall promptly, personally, and confidentially notify the person who is the subject of the order, stating the grounds and provisions of the order and the right to contest the order, the right to be present

at a judicial hearing in the county court in the county in which the person resides to review the order, and the right to be represented by counsel during the hearing. If the person who is the subject of the order refuses to comply with the order and refuses to cooperate voluntarily with the state health officer or a designee of the state health officer, the state health officer or designee may petition the county court in the county in which the person resides for an order of compliance. The state health officer or designee shall request the state's attorney in the county in which the person resides to file the petition in the county court. If an order of compliance is requested, the court shall hear the matter within ten days after the request. Notice of the place, date, and time of the court hearing must be made by personal service or, if the person is not available, must be mailed to the person who is the subject of the order by certified mail at the person's last known address. Proof of mailing by the state health officer or designee is sufficient notice under this section. The burden of proof is on the state health officer or designee to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed in the order are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order. If the court dismisses the order, the fact that the order was issued must be expunged from the records of the state department of health and consolidated laboratories. If the court affirms or modifies the order and the person subject to the order is infected with the human immunodeficiency virus, the court shall require the person to disclose the names and addresses, if known, of persons with whom the person has had contact that poses an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus. Failure to comply with court-ordered disclosure constitutes contempt of court.

5. A person who is the subject of an order authorized under this section is entitled to representation by legal counsel during any hearing to review the issuance of the order.

23-07.4-02. Emergency public health procedures.

1. When the procedures under section 23-07.4-01 have been exhausted or cannot be satisfied and the state health officer or designee knows or has reason to believe, because of medical or epidemiological information, that a person within that official's jurisdiction has human immunodeficiency virus infection and that the person continues to engage in behavior that presents an imminent danger to the public health, the state health officer or designee may bring an action in county court in the county in which the person resides to enjoin the person from engaging in or continuing to engage in such behavior. The state health officer or designee shall request the state's attorney to file the action in county court.
2. In addition to issuance of an injunction order requested under subsection 1, the court may issue other appropriate orders including an order to take the person into custody, for a period not to exceed ninety days and place the person in a facility

designated or approved by the state health officer. A custody order issued for the purpose of counseling and testing to determine whether the person has human immunodeficiency virus infection must provide for the immediate release from custody and from the facility for any person whose confirmed test results are negative and may provide for counseling or other appropriate measures to be imposed on any person whose confirmed test results are positive. The person who is the subject of the order must be given prompt, personal, and confidential notice of the order stating the grounds and provisions of the order and notifying the person of the right to contest the order, the right to be present at a judicial hearing in the county court in the county in which the person resides to review the order, and the right to be represented by counsel during the hearing. If the person contests testing or treatment, no invasive medical procedures may be carried out before a hearing is held under subsection 3.

3. Any order issued by the county court under subsection 2 is subject to review in a court hearing. Prompt, personal, and confidential notice of the place, date, and time of the court hearing and of the person's right to be present at the hearing and the right to representation by counsel during the hearing must be given to the person who is the subject of the court order. The hearing must be conducted by the court within forty-eight hours after the order is issued. The burden of proof is on the state health officer or designee to show by clear and convincing evidence that grounds exist for the order issued by the court under subsection 2 and that the terms and conditions imposed in the order are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order. If the court dismisses the order, the fact that the order was issued must be expunged from the records of the state department of health and consolidated laboratories. If the court affirms or modifies the order and the person subject to the order is infected with the human immunodeficiency virus, the court shall require the person to disclose the names and addresses, if known, of persons with whom the person subject to the order has had contact that poses an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus. Failure to comply with court-ordered disclosure constitutes contempt of court.
4. A person who is the subject of an order authorized under this section is entitled to representation by legal counsel during any hearing to review the issuance of the order.

23-07.4-03. Closed hearing - Confidentiality of information. A hearing conducted under this chapter must be closed and any report, transcript, record, or other information relating to actions taken under this chapter is confidential.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 165

HOUSE BILL NO. 1527
(Representatives Mertens, Wilkie, Brokaw)
(Senator Richard)

TRESPASS PENALTY

AN ACT to create and enact a new subsection to section 12.1-22-03 of the North Dakota Century Code, relating to the penalty for being on property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 12.1-22-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

A person is guilty of a class B misdemeanor if that person remains upon the property of another after being requested to leave the property by a duly authorized person.

Approved April 11, 1989
Filed April 11, 1989

CHAPTER 166

SENATE BILL NO. 2515
(Nething)

THEFT OFFENSE GRADING

AN ACT to amend and reenact subsection 1 of section 12.1-23-05 of the North Dakota Century Code, relating to grading of theft offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-23-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. ~~Theft~~ Notwithstanding the provisions of subsection 2, theft under this chapter is a class B felony if the property or services stolen exceed ten thousand dollars in value or are acquired or retained by a threat to commit a class A or class B felony or to inflict serious bodily injury on the person threatened or on any other person.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 167

HOUSE BILL NO. 1059
(Legislative Council)
(Interim Law Enforcement Committee)

MISAPPLICATION OF ENTRUSTED PROPERTY

AN ACT to amend and reenact section 12.1-23-07 of the North Dakota Century Code, relating to the gradation of the offense of misapplication of entrusted property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-23-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-23-07. Misapplication of entrusted property.

1. A person is guilty of a class A misdemeanor misapplication of entrusted property if he the person disposes of, uses, or transfers any interest in property which that has been entrusted to him the person as a fiduciary, or in his the person's capacity as a public servant or an officer, director, agent, employee of, or a person controlling a financial institution, in a manner that he the person knows is not authorized and that he the person knows to involve a risk of loss or detriment to the owner of the property or to the government or other person for whose benefit the property was entrusted.
2. Misapplication of entrusted property is:
 - a. A class B felony if the value of the property misapplied exceeds ten thousand dollars.
 - b. A class C felony if the value of the property misapplied exceeds five hundred dollars but does not exceed ten thousand dollars.
 - c. A class A misdemeanor if the value of the property misapplied exceeds two hundred fifty dollars but does not exceed five hundred dollars.
 - d. A class B misdemeanor in all other cases.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 168

HOUSE BILL NO. 1282
(W. Williams, Christman, Ness)

AUCTION THEFT

AN ACT to amend and reenact subsection 3 of section 12.1-23-09 of the North Dakota Century Code, relating to prima facie evidence of theft in auction-related situations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12.1-23-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. a. It ~~shall be~~ is a prima facie case of theft under this chapter if it is shown that a public servant or an officer, director, agent, employee of, or a person connected in any capacity with a financial institution has failed to pay or account upon lawful demand for money or property entrusted to him as part of his official duties or if an audit reveals a shortage or falsification of his accounts.
- b. It is a prima facie case of theft under this chapter if it is shown that a person, having successfully bid on and obtained an item at an auction, removed the item from the auction premises without paying or making provisions to pay for the item.
- c. Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
- ~~c.~~ d. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, gives rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 169

HOUSE BILL NO. 1419
(Representatives Wald, Wentz, D. Larson)
(Senators Nalewaja, J. Meyer)

OBSCENITY

AN ACT to create and enact a new section to chapter 12.1-27.2 of the North Dakota Century Code, relating to possession of certain materials; to amend and reenact subsections 4 and 9 of section 12.1-27.1-01, sections 12.1-27.1-03, 12.1-27.2-01, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, 12.1-27.2-05, and 12.1-27.2-06 of the North Dakota Century Code, relating to obscenity and sexual performances by minors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 9 of section 12.1-27.1-01 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. As used in this chapter, the terms "obscene material" and "obscene performance" mean material or a performance which:
 - a. Taken as a whole, the average person, applying contemporary North Dakota standards, would find predominantly appeals to a prurient interest;
 - b. Depicts or describes in a patently offensive manner sexual conduct, whether normal or perverted; and
 - c. Taken as a whole, ~~lacks~~ the reasonable person would find lacking in serious literary, artistic, political, or scientific value.

Whether material or a performance is obscene must be judged with reference to ordinary adults, unless it appears from the character of the material or the circumstances of its dissemination that the material or performance is designed for minors or other specially susceptible audience, in which case the material or performance must be judged with reference to that type of audience.

9. As used in this chapter, the term "prurient interest" means a voyeuristic, lascivious, degrading, shameful, or morbid interest in nudity, sex, or excretion that goes substantially beyond customary limits of candor in description or representation of those matters.

SECTION 2. AMENDMENT. Section 12.1-27.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.1-03. Promoting obscenity to minors - Minor performing in obscene performance - Classification of offenses.

1. It shall be a class C felony for a person, knowing of its character, to knowingly recklessly promote to a minor any material or performance which is harmful to minors, or to admit a minor to premises where a performance harmful to minors is exhibited or takes place.
2. It shall be a class C felony to permit a minor to participate in a performance which is harmful to minors.

SECTION 3. AMENDMENT. Section 12.1-27.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.2-01. Definitions. As used in this chapter:

1. "Obscene sexual performance" means any performance which includes sexual conduct by a ~~child less than sixteen years of age~~ minor in any obscene material or obscene performance, as defined in section 12.1-27.1-01.
2. "Performance" means any play, motion picture, photograph, dance, or other visual representation ~~exhibited before an audience~~, or any part of a performance.
3. "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise.
4. "Sexual conduct" means actual or simulated sexual intercourse, sodomy, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals, including the further definitions of sodomy and sadomasochistic abuse under section 12.1-27.1-01.
5. "Sexual performance" means any performance which includes sexual conduct by a ~~child less than sixteen years of age~~ minor.
6. "Simulated" means the explicit depiction of any of the conduct set forth in subsection 4 which creates the appearance of actual sexual conduct and which exhibits any nude or partially denuded human figure, as defined in section 12.1-27.1-03.1.

SECTION 4. AMENDMENT. Section 12.1-27.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.2-02. Use of a ~~child~~ minor in a sexual performance. A person is guilty of a class B felony if, knowing the character and content of a performance, that person employs, authorizes, or induces a ~~child less than sixteen years of age~~ minor to engage in sexual conduct during a performance or, if being a parent, legal guardian, or custodian of a ~~child less than sixteen years of age~~ minor, that person consents to the participation by the ~~child~~ minor in sexual conduct during a performance.

SECTION 5. AMENDMENT. Section 12.1-27.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.2-03. Promoting or directing an obscene sexual performance by a child minor. A person is guilty of a class B felony if, knowing the character and content of a performance, that person produces, directs, or promotes any obscene performance which includes sexual conduct by a child less than sixteen years of age person who was a minor at the time of the performance.

SECTION 6. AMENDMENT. Section 12.1-27.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.2-04. Promoting a sexual performance by a child minor. A person is guilty of a class C felony if, knowing the character and content of a performance, that person produces, directs, or promotes any performance which includes sexual conduct by a child less than sixteen years of age person who was a minor at the time of the performance.

SECTION 7. A new section to chapter 12.1-27.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Possession of certain materials prohibited. A person is guilty of a class A misdemeanor following a first offense or a class C felony following a second or subsequent offense if, knowing of its character and content, that person knowingly possesses any motion picture, photograph, or other visual representation that includes sexual conduct by a minor.

SECTION 8. AMENDMENT. Section 12.1-27.2-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.2-05. Sexual performance by a child minor - Affirmative defenses. It is an affirmative defense to a prosecution under this chapter that:

1. The defendant in good faith reasonably believed the person appearing in the performance was sixteen eighteen years of age or older;
2. The material or performance involved was disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other appropriate purpose by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman member of the clergy, prosecutor, judge, or other person having a similar interest in the material or performance; or
3. The defendant had no financial interest in promoting a sexual performance by a child less than sixteen years of age minor, other than employment in a theater, which employment does not include compensation based upon any proportion of the receipts arising from promotion of the sexual performance, and that person was in no way responsible for acquiring the material for sale, rental, or exhibition.

SECTION 9. AMENDMENT. Section 12.1-27.2-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-27.2-06. Proof of age of child minor. When it becomes necessary under this chapter to determine whether a child who minor participated in a

sexual performance ~~was under the age of sixteen years~~, the trier of fact may base its determination on personal inspection of the ~~child~~ minor, inspection of a photograph or motion picture of the sexual performance, testimony by a witness to the sexual performance as to the age of the ~~child~~ minor based upon the ~~child's~~ minor's appearance, expert testimony based upon the appearance of the ~~child~~ minor in the sexual performance, or any other method authorized by law or by rule.

Approved March 30, 1989
Filed March 31, 1989

CHAPTER 170

SENATE BILL NO. 2455
(W. Meyer)

GAMING TAXES AND LIMITATIONS

AN ACT to create and enact a new subdivision to subsection 5 of section 12.1-28-02, two new subsections to section 53-06.1-07, a new section to chapter 53-06.1, a new subsection to section 57-39.2-04, and a new subsection to section 57-40.2-04 of the North Dakota Century Code, relating to seizure of illegal gaming devices, the maximum prize per play in electronic video gaming device play of games of chance, commingling of games of charitable gaming tickets, imposition of a tax in lieu of sales taxes on charitable gaming tickets, and sales and use tax exemption for proceeds from games of chance conducted through use of electronic gaming devices; and to amend and reenact subsection 3 of section 53-06.1-11, sections 53-06.1-12, and 53-06.1-12.1 of the North Dakota Century Code, and subsections 4 and 5 of section 53-06.1-14 of the North Dakota Century Code, as contained in House Bill No. 1641, as approved by the fifty-first legislative assembly, relating to expense limitations for organizations, distributors, and manufacturers of gaming devices, and games of chance taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 5 of section 12.1-28-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

A law enforcement officer may seize any device described in subdivision a upon probable cause to believe that the device was used or is intended to be used in violation of this chapter or chapter 53-06.1. The court shall order the device forfeited in the same manner and according to the same procedure as provided under chapter 19-03.1.

SECTION 2. Two new subsections to section 53-06.1-07 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

In electronic video gaming device play of any game of chance permitted by this section, the maximum prize per play is five hundred dollars.

Any game using charitable gaming tickets may be conducted only through use of commingled games after June 30, 1991.

* SECTION 3. AMENDMENT. Subsection 3 of section 53-06.1-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 53-06.1-11 was also amended by section 6 of House Bill No. 1185, chapter 615.

3. Subject to the limitations of this subsection, expenses incurred in connection with holding, operating, or conducting any game of chance pursuant to this chapter may be deducted from adjusted gross proceeds, to the extent that total expenses for games of chance do not exceed forty-five percent of the total ~~the first two hundred thousand dollars of adjusted gross proceeds, computed on an annual basis~~ per quarter and forty-five percent of the adjusted gross proceeds in excess of two hundred thousand dollars per quarter. The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for taxes. This subsection does not authorize violations of the rent limitations contained in this chapter.

SECTION 4. AMENDMENT. Section 53-06.1-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-12. Tax based on adjusted gross proceeds. A tax as provided in this section upon the total adjusted gross proceeds received by a licensed eligible organization ~~shall~~ must be paid to the licensing authority on a quarterly basis in ~~such~~ the manner and upon ~~such~~ the forms as ~~shall be~~ prescribed by the licensing authority by rule. The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for expenses. The amount of this tax ~~shall~~ must be paid from adjusted gross proceeds and may not be charged against the percentage limitation of expenses. The tax is hereby imposed upon every eligible organization, to be levied, collected, and paid quarterly with respect to the adjusted gross proceeds of the eligible organization as provided in this section, computed at the following rates:

1. On adjusted gross proceeds not in excess of ~~six~~ two hundred thousand dollars per quarter, a tax of five percent.
2. On adjusted gross proceeds in excess of two hundred thousand dollars per quarter but not in excess of four hundred thousand dollars per quarter, a tax of ten percent.
3. On adjusted gross proceeds in excess of four hundred thousand dollars per quarter but not in excess of six hundred thousand dollars per quarter, a tax of fifteen percent.
4. On adjusted gross proceeds in excess of six hundred thousand dollars per quarter, a tax of twenty percent.

SECTION 5. AMENDMENT. Section 53-06.1-12.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-12.1. Allocation of games of chance tax - Appropriation. The state treasurer, at the direction of the licensing authority, shall pay quarterly to cities and counties in proportion to the tax collected under ~~section 53-06.1-12 from eligible organizations conducting games of chance within each city, for sites within city limits, or within each county, for sites outside city limits, the following amounts which are hereby appropriated:~~

1. ~~Two fifths of the tax collected under subsection 1 of section 53-06.1-12 within the city or county.~~
2. ~~One-tenth of the tax collected under subsection 2 of section 53-06.1-12 within the city or county.~~

~~The remaining tax collected under section 53-06.1-12, up to the amount paid during the 1985-87 biennium, shall be paid by the licensing authority to the state treasurer for deposit in the state general fund one hundred seventy thousand dollars per quarter to cities and counties in proportion to the adjusted gross proceeds within each city, for sites within city limits, or within each county, for sites outside city limits, to the total adjusted gross proceeds. Any amounts received by a city or county under this section must be used by the city or county for expenses connected with enforcement of this chapter within the city or county. Any amount remaining because of the limitation with respect to the 1985-87 biennium, up to~~ In addition, two hundred thousand dollars per biennium, must be deposited in the attorney general's operating budget fund and must be used only for the enforcement of gaming as appropriated. Any amount remaining in excess of two hundred thousand dollars taxes collected under this chapter must be deposited by the state treasurer in the general fund.

SECTION 6. A new section to chapter 53-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Charitable gaming tickets excise tax in lieu of sales and use taxes. In addition to any other tax provided by law and in lieu of sales or use taxes, there is imposed a tax of two percent on the gross receipts from the sale at retail of charitable gaming tickets to a final user. A sale at retail for purposes of this section includes charitable gaming tickets sold and charitable gaming tickets given in return for another charitable gaming ticket as authorized under this chapter. Gross receipts for purposes of this section includes the face value of all charitable gaming tickets sold or given in return for another charitable gaming ticket. The tax imposed by this section must be paid to the licensing authority at the time returns are made and taxes are paid by the eligible organization under section 53-06.1-12.

* SECTION 7. AMENDMENT. Subsections 4 and 5 of section 53-06.1-14 of the 1987 Supplement to the North Dakota Century Code, as amended by House Bill No. 1641, as approved by the fifty-first legislative assembly, are hereby amended and reenacted to read as follows:

4. Every manufacturer or distributor of electronic video gaming devices through which games of chance are conducted under this chapter shall apply before the first day of April of each year for an annual license upon a form prescribed by the attorney general and shall submit the appropriate license fee. Each applicant shall provide such necessary and reasonable information as the attorney general requires. The license fee for a manufacturer or distributor is one thousand dollars. Every eligible organization shall ~~purchase or~~ lease all electronic video gaming devices from a ~~manufacturer or~~ distributor licensed under this chapter.
5. No licensed or authorized eligible organization may be a distributor. No wholesaler of liquor or alcoholic beverages may be

* NOTE: Section 53-06.1-14 was also amended by section 2 of House Bill No. 1210, chapter 618; section 15 of Senate Bill No. 2220, chapter 612; and section 7 of House Bill No. 1641, chapter 613.

a distributor. No North Dakota licensed manufacturer may be a distributor.

SECTION 8. A new subsection to section 57-39.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from electronic gaming devices licensed by the attorney general under chapter 53-06.1.

SECTION 9. A new subsection to section 57-40.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from electronic games of chance licensed by the attorney general under chapter 53-06.1.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 171

SENATE BILL NO. 2408
(Senator Stenehjem)
(Representative R. Larson)

SUNDAY FOOD STORE EMPLOYEES

AN ACT to amend and reenact subsection 30 of section 12.1-30-03 of the North Dakota Century Code, relating to businesses allowed to operate on Sundays.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 30 of section 12.1-30-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30. Food stores operated by an owner or manager in addition to not more than six employees working in the store at one time on a Sunday; however, the governing body of a city or county may, by ordinance, increase the number of employees allowed to work in a store at one time on a Sunday.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 172

SENATE BILL NO. 2340
(Senator Mathern)
(Representative Bernstein)

CRIMINAL SENTENCING ALTERNATIVES

AN ACT to amend and reenact subsection 1 of section 12.1-32-02 of the North Dakota Century Code, relating to sentencing alternatives in criminal cases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Every person convicted of an offense who is sentenced by the court shall be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense:
 - a. Payment of the reasonable costs of ~~his~~ that person's prosecution.
 - b. Probation.
 - c. A term of imprisonment, including intermittent imprisonment:
 - (1) In a state correctional facility, a regional corrections center, a county jail, or in the state farm in accordance with section 12-51-07, if convicted of a felony or a class A misdemeanor.
 - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
 - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.
 - d. A fine.
 - e. Restitution for damages resulting from the commission of the offense.
 - f. Restoration of damaged property, or other appropriate work detail.
 - g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.

* NOTE: Section 12.1-32-02 was also amended by section 2 of House Bill No. 1052, chapter 158.

~~h. Commitment to any other facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.~~

Sentences imposed under this subsection shall not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection shall not be construed as not permitting the unconditional discharge of an offender following conviction. Sentences under subdivisions e or f shall be imposed in the manner provided in section 12.1-32-08. This subsection shall not be construed to prohibit utilization of sections 12-53-13 through 12-53-19, relating to suspension of imposition of sentence, nor shall this subsection limit the conditions which can be imposed on a probationer under section 12-53-14.

Approved March 22, 1989
Filed March 23, 1989

DOMESTIC RELATIONS

CHAPTER 173

HOUSE BILL NO. 1642
(Representatives Shockman, Marks, D. Larson)
(Senators Axtman, Tennefos)

FETAL TISSUE RESEARCH

AN ACT to amend and reenact sections 14-02.2-01 and 14-02.2-02 of the North Dakota Century Code, relating to the use of fetal organs or tissue for experimentation or transplantation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02.2-01. Live fetal experimentation - Penalty.

1. ~~No~~ A person ~~shall~~ may not use any live human fetus, whether before or after expulsion from its mother's womb, for scientific, laboratory, research, or other kind of experimentation. This section ~~shall~~ does not prohibit procedures incident to the study of a human fetus while it is in its mother's womb, provided that in the best medical judgment of the physician, made at the time of the study, ~~said~~ the procedures do not substantially jeopardize the life or health of the fetus, and provided ~~said~~ the fetus is not the subject of a planned abortion. In any criminal proceeding the fetus ~~shall be~~ is conclusively presumed not to be the subject of a planned abortion if the mother signed a written statement at the time of the study, that she was not planning an abortion.
2. A person may not use a fetus or newborn child, or any tissue or organ thereof, resulting from an induced abortion in animal or human research, experimentation, or study, or for animal or human transplantation.
3. This section ~~shall~~ does not prohibit or regulate diagnostic or remedial procedures, the purpose of which is to determine the life or health of the fetus involved or to preserve the life or health of the fetus involved, or of the mother involved.
- ~~3-~~ 4. A fetus is a live fetus for the purposes of this section when, in the best medical judgment of a physician, it shows evidence of life as determined by the same medical standards as are used in determining evidence of life in a spontaneously aborted fetus at approximately the same stage of gestational development.
- ~~4-~~ 5. Any person violating this section ~~shall be~~ is guilty of a class A felony.

SECTION 2. AMENDMENT. Section 14-02.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02.2-02. Experimentation on dead fetus - Use of fetal organs or tissue for transplantation or experimentation - Sale of fetus or fetal organs or tissue - Penalty.

1. ~~No~~ An experimentation may ~~not~~ knowingly be performed upon a dead fetus resulting from an occurrence other than an induced abortion unless the consent of the mother has first been obtained; provided, however, that ~~such the consent shall~~ is not be required in the case of a routine pathological study. In any criminal proceeding, consent ~~shall be~~ is conclusively presumed to have been granted for the purposes of this section by a written statement, signed by the mother who is at least eighteen years of age, to the effect that she consents to the use of her fetus for scientific, laboratory, research, or other kind of experimentation or study. Such written consent ~~shall constitute~~ constitutes lawful authorization for the transfer of the dead fetus.
2. A person may not use a fetus or fetal organs or tissue resulting from an induced abortion in animal or human research, experimentation, or study, or for animal or human transplantation except for diagnostic or remedial procedures, the purpose of which is to determine the life or health of the fetus or to preserve the life or health of the fetus or mother, or pathological study.
3. ~~No~~ A person ~~shall~~ may not perform or offer to perform an abortion where part or all of the consideration for ~~said~~ the abortion is that the fetal ~~remains~~ organs or tissue may be used for animal or human transplantation, experimentation, or other kind of research or study.
- 3- 4. ~~No~~ A person ~~shall~~ may not knowingly sell, transfer, distribute, or give away, accept, use, or attempt to use any fetus or fetal organs or tissue for a use ~~which that~~ is in violation of the provisions of this section. For purposes of this section, the word "fetus" shall ~~include~~ includes also an embryo or neonate.
- 4- 5. Violation of this section by any person is a class C felony.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 174

SENATE BILL NO. 2051
(Legislative Council)
(Interim Judiciary Committee)

EMPLOYER'S DISCRIMINATORY PRACTICES

AN ACT to amend and reenact sections 14-02.4-02 and 14-02.4-03 of the North Dakota Century Code, relating to definitions and employer's discriminatory practices under the Human Rights Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02.4-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Age" insofar as it refers to any prohibited unfair employment or other practice means over the age of forty and under the age of seventy.
2. "Court" means the district court in the judicial district in which the alleged discriminatory practice occurred.
3. "Discriminatory practice" means an act or attempted act which because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with regard to marriage or public assistance results in the unequal treatment or separation or segregation of any persons, or denies, prevents, limits, or otherwise adversely affects, or if accomplished would deny, prevent, limit, or otherwise adversely affect, the benefit of enjoyment by any person of employment, labor union membership, housing accommodations, property rights, public accommodations, public services, or credit transactions. The term "discriminate" includes segregate or separate and for purposes of discrimination based on sex, it includes sexual harassment.
 - a- Sexual harassment includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:
 - ↔ a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;

- ~~42~~ b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or
- ~~43~~ c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, educational, or housing environment; and in the case of employment, the employer is responsible for its acts and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.
4. "Employee" means a person who performs services for an employer, who employs ten or more individuals, for compensation, whether in the form of wages, salaries, commission, or otherwise. "Employee" does not include a person elected to public office in the state or political subdivision by the qualified voters thereof, or a person chosen by the officer to be on the officer's political staff, or an appointee on the policymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office. Provided, "employee" does include a person subject to the civil service or merit system or civil service laws of the state government, governmental agency, or a political subdivision.
5. "Employer" means a person within the state who employs ten or more full-time employees for more than one quarter of the year, and a person wherever situated who employs ten or more employees whose services are to be partially or wholly performed in the state.
6. "Employment agency" means a person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunity to work for an employer and includes any agent of the person.
7. "Handicap" means an impairment that substantially limits one or more major life activities. The term includes having a record of such an impairment or being regarded as having such an impairment.
8. "Labor organization" means a person, employee representation committee, plan in which employees participate, or other organization which exists solely or in part for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.
- ~~8~~ 9. "National origin" means the place of birth of an individual or any of the individual's lineal ancestors.
- ~~9~~ 10. "Otherwise qualified person" means a person who is capable of performing the essential functions of the particular employment in question.
11. "Person" means an individual, partnership, association, corporation, unincorporated organization, mutual company, joint stock company, trust, agent, legal representative, trustee, trustee in bankruptcy, receiver, labor organization, public body, public

corporation, and the state and a political subdivision and agency thereof.

- ~~+0-~~ 12. "Public accommodation" means every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity. "Public accommodation" does not include a bona fide private club or other place, establishment, or facility which is by its nature distinctly private; provided, however, the distinctly private place, establishment, or facility is a "public accommodation" during the period it caters or offers services, facilities, or goods to the general public for a fee, charge, or gratuity.
- ~~+1-~~ 13. "Public service" means a public facility, department, agency, board, or commission, owned, operated, or managed by or on behalf of this state, a political subdivision thereof, or a public corporation.
- ~~+2-~~ 14. "Real estate broker" and "real estate salesman" mean a real estate broker and real estate salesman as defined in section 43-23-06.1.
- ~~+3-~~ 15. "Real property" means a right, title, interest in or to the possession, ownership, enjoyment, or occupancy of a parcel of land, building situated thereon, or portion of the building.
16. "Reasonable accommodations" means accommodations by an employer that do not:
- a. Unduly disrupt or interfere with the employer's normal operations;
 - b. Threaten the health or safety of the handicapped individual or others;
 - c. Contradict a business necessity of the employer; or
 - d. Impose undue hardship on the employer, based on the size of the employer's business, the type of business, the financial resources of the employer, and the estimated cost and extent of the accommodation.
- ~~+4-~~ 17. "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
- ~~+5-~~ 18. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.

SECTION 2. AMENDMENT. Section 14-02.4-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-02.4-03. Employer's discriminatory practices. It is a discriminatory practice for an employer to fail or refuse to hire a person;

to discharge an employee; or to accord adverse or unequal treatment to a person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of race, color, religion, sex, national origin, age, physical or mental handicap, or status with respect to marriage or public assistance. It is a discriminatory practice for an employer to fail or refuse to make reasonable accommodations for an otherwise qualified person with a physical or mental handicap or because of that person's religion. This chapter does not prohibit compulsory retirement of any employee who has attained sixty-five years of age, but not seventy years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if the employee is entitled to an immediate nonforfeiture annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans, of the employer of the employee, which equal, in the aggregate, at least twenty-seven thousand dollars.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 175

HOUSE BILL NO. 1468
(Representative Shaft)
(Senator Holmberg)

MAGISTRATES' AUTHORITY

AN ACT to amend and reenact sections 14-03-09, 16.1-15-08, 16.1-15-09, 16.1-15-11, 16.1-15-13, and 16.1-16-07 of the North Dakota Century Code, relating to the authority of magistrates to perform marriages and the duty of magistrates to preserve election ballots.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-03-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-03-09. Who may solemnize marriages. Marriages may be solemnized by all judges of courts of record within their respective jurisdictions, by magistrates appointed and assigned under section 27-07.1-07, by ordained ministers of the gospel and priests of every church, by ministers of the gospel licensed by regular church bodies or denominations and serving as pastors of churches, and by any person authorized by the forms and usages of any church or religious denomination or organization organized or possessing a certificate of authority pursuant to chapters 10-24 through 10-28.

SECTION 2. AMENDMENT. Section 16.1-15-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-08. Wrapping and returning of ballots to county judge. After having prepared the reports and poll lists provided for in section 16.1-15-06 for delivery to the county auditor, the inspector and election judges shall cause the ballots of each kind cast at the election to be smoothly spread upon a wrapper of strong durable paper of the same width as the ballots and of sufficient strength to permit its being folded to form a complete wrapper for the ballots. The ballots and wrappers shall then be folded tightly together and the wrapper shall be pasted or glued securely at the outer end to completely envelop and hold the ballots together. Ballots which are void shall be wrapped in a separate wrapper and shall be marked "void". Ballots which are spoiled shall be separately wrapped and marked "spoiled". In folding and sealing ballots, the various classes of ballots shall be kept separate. The judges shall fold all ballots counted by them, except those which are void, and shall place them in manila wrappers, not exceeding two hundred ballots to each wrapper. Each wrapper shall be endorsed with the name or number of the precinct and the date on which the election was held. The wrappers shall be sealed securely in a manner prescribed by the secretary of state so the wrappers cannot be opened without an obvious and permanent breaking of the seal. The ballots, together with those found void or spoiled, and together with the opened envelopes from voted absentee ballots and the unopened envelopes of absentee ballots rejected as defective, shall

be returned either in person or by mail to the county judge or to the magistrate for the county appointed and assigned under section 27-07.1-07. Ballots used with any electronic voting system or counted by an electronic counting machine shall be wrapped, sealed, and returned as provided in this section.

SECTION 3. AMENDMENT. Section 16.1-15-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-09. Voting machines - Electronic voting systems - Electronic counting machines - Returns. Election officers shall make returns of votes cast upon voting machines and on electronic voting systems and counted on electronic counting machines for all candidates and for any measures or questions in the same manner as now or hereafter provided by law insofar as such provisions of law are applicable. Within the ability of the electronic counting machine to accurately do so, all ballots not containing write-in votes may be counted by the machine prior to the counting and recording of the ballots containing write-in votes. The county auditor shall designate the public place or places where electronic voting system ballots and ballots to be counted on electronic counting machines must be delivered by the election inspector and the two election judges to be counted in the presence of the election inspector and the two election judges. All such counting centers used for counting electronic voting system ballots shall have tabulating equipment which has an element which generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment must also be equipped with an element which generates a printed record at the end of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate on the ballot, and the total number of votes cast for or against any measure appearing on the ballot. Both printed records must be certified by the election inspector and the two election judges.

If any electronic voting system ballot or a ballot counted by an electronic counting machine is damaged or defective so that it cannot be properly counted by the automatic tabulating or electronic counting equipment, a true duplicate copy must be made by election officials of opposed interests and substituted for the damaged or defective ballot. All duplicate ballots must be clearly labeled duplicate, must bear a serial number which must be recorded on the damaged or defective ballot, and must be wrapped and delivered with other ballots to the county judge or to the magistrate for the county appointed and assigned under section 27-07.1-07.

SECTION 4. AMENDMENT. Section 16.1-15-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-11. Locking and examination of voting machines - Tally of voting machine votes - Certification to county judges. Voting machines shall remain locked for ten days next following use at an election and as much longer thereafter as necessary or advisable because of any existing or probable contest over the results of the election. They may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction. A complete record of the tally of votes from each voting machine shall be made by the inspector and the election judges at the time votes are tallied. This record shall agree in every respect with the pollbooks and the original reports of the total votes cast for each candidate

or measure. The record shall then be certified by the inspector and the election judges, and one copy shall be delivered to the county judge or to the magistrate of the county appointed and assigned under section 27-07.1-07 at the same time as the ballots are delivered to him pursuant to section 16.1-15-08. The records may be opened and all data and figures therein examined upon the order of any court of competent jurisdiction in the event of any existing or probable contest over the results of the election.

SECTION 5. AMENDMENT. Section 16.1-15-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-15-13. County judge to keep ballots forty-five days - Exception - Use of ballots as evidence. Immediately upon receiving the ballots as provided in section 16.1-15-08, the county judge or the magistrate shall give receipt therefor to the election judges and shall place the ballots properly arranged in the order of the precinct number in boxes which shall be securely locked. The boxes shall be placed in a fireproof vault and shall be kept securely for forty-five days. They shall not be opened nor inspected, except upon court order in a contested election, when it is necessary to produce them at a trial for any offense committed at an election, or to permit election officials to complete their duties. Forty-five days after the election, upon determination by the county judge or the magistrate that no contest is pending, the ballots shall be destroyed. If any contest of the election of any officer voted for at the election or a prosecution under the provisions of this title is pending at the expiration of such time, the ballots shall not be destroyed until the contest or prosecution is finally determined. The ballots returned to the county judge or the magistrate as provided in this section shall be received in evidence without introducing further foundation.

SECTION 6. AMENDMENT. Section 16.1-16-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-16-07. Contest involving irregularity of ballots - Preservation of ballots. Either the contestant or the contestee, within the time provided by this title for the preservation of ballots, may give notice by certified mail to the county judge or to the magistrate for the county appointed and assigned under section 27-07.1-07 of any county where he desires the ballots preserved, that an election contest is pending in a designated court. Thereupon, it is the duty of the county judge or the magistrate to preserve all the paper ballots, electronic voting system ballots, and voting machine records until the contest has been finally determined.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 176

SENATE BILL NO. 2431
(Senators Mushik, Stenehjem, J. Meyer)
(Representatives J. DeMers, Stofferahn, Wentz)

MARRIAGE LICENSE SUPPLEMENTAL FEE

AN ACT to amend and reenact section 14-03-22 of the North Dakota Century Code, relating to the supplemental fee for aid to victims of domestic violence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 14-03-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-03-22. Marriage license fee - Supplemental fee - Duties of officers. For the issuance and filing of a marriage license the county judge shall collect the sum of six dollars from the party applying for the license. ~~Beginning with July 1, 1981, the~~ The judge shall also collect from the applicant a supplemental fee of ~~nineteen~~ twenty-nine dollars for aid to victims of domestic violence, pursuant to chapter 14-07.2. The judge shall deposit the collected sums monthly with the county treasurer. The county treasurer shall forward the amount represented by supplemental fees to the state treasurer by the fifteenth of each month for crediting to the domestic violence prevention fund. The judge shall prepare a copy of the license and certificate and transmit them to the registrar of vital statistics who shall record them in a book of records kept in ~~his~~ the registrar's office for that purpose. The registrar shall index ~~his~~ the records and upon request shall issue certified copies of the recorded license and certificate for a one dollar fee. ~~He~~ The registrar shall keep an accurate account of these fees and shall turn them over to the state treasurer by the fifteenth of each month for crediting to the general fund.

Approved March 28, 1989
Filed March 28, 1989

* NOTE: Section 14-03-22 was also amended by section 1 of Senate Bill No. 2454, chapter 177.

CHAPTER 177

SENATE BILL NO. 2454
(Senators Mushik, J. Meyer, Stenehjem)
(Representatives J. DeMers, Sorensen, Wentz)

DOMESTIC VIOLENCE

AN ACT to create and enact sections 14-07.1-10, 14-07.1-11, 14-07.1-12, 14-07.1-13, 14-07.1-14, 14-07.1-15, 14-07.1-16, 14-07.1-17, and 14-07.1-18 of the North Dakota Century Code, relating to the consolidation of statutes concerning procedures for handling domestic violence and the domestic violence prevention fund; to amend and reenact sections 14-03-22, 14-07.1-01, 14-07.1-02, 14-07.1-03, 14-07.1-04, 14-07.1-05, 14-07.1-06, 14-07.1-07, 14-07.1-08, subsection 8.1 of section 27-07.1-17, and subsection 1 of section 29-06-15 of the North Dakota Century Code, relating to the supplemental marriage license fee, domestic violence protection orders, jurisdiction of county courts, and warrantless arrests in domestic violence cases; to repeal chapters 12-64 and 14-07.2 of the North Dakota Century Code, relating to procedures for handling domestic violence and the domestic violence prevention fund; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 14-03-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-03-22. Marriage license fee - Supplemental fee - Duties of officers. For the issuance and filing of a marriage license the county judge shall collect the sum of six dollars from the party applying for the license. ~~Beginning with July 1, 1981, the~~ The judge shall also collect from the applicant a supplemental fee of nineteen dollars for aid to victims of domestic violence through the domestic violence prevention fund, pursuant to chapter ~~14-07.2~~ 14-07.1. The judge shall deposit the collected sums monthly with the county treasurer. The county treasurer shall forward the amount represented by supplemental fees to the state treasurer by the fifteenth of each month for crediting to the domestic violence prevention fund. The judge shall prepare a copy of the license and certificate and transmit them to the registrar of vital statistics who shall record them in a book of records kept in ~~his~~ the registrar's office for that purpose. The registrar shall index ~~his~~ the records and upon request shall issue certified copies of the recorded license and certificate for a one dollar fee. ~~He~~ The registrar shall keep an accurate account of these fees and shall turn them over to the state treasurer by the fifteenth of each month for crediting to the general fund.

SECTION 2. AMENDMENT. Section 14-07.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-01. "Adult abuse" defined. For purposes of this chapter, "adult abuse" includes physical harm, bodily injury, or assault on the complaining adult, or the imminent threat thereof. Definitions.

* NOTE: Section 14-03-22 was also amended by section 1 of Senate Bill No. 2431, chapter 176.

1. "Department" means the state department of health and consolidated laboratories.
2. "Domestic violence" includes physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, on the complaining family or household members.
3. "Domestic violence program" means a program that provides emergency housing for victims of domestic violence and their dependents, plus some or all of the following additional services:
 - a. Counseling.
 - b. Advocacy.
 - c. Community education on domestic violence.
 - d. Support groups.
 - e. Twenty-four hour crisis lines.
 - f. Referral to other sources for services not provided by the domestic violence program.
4. "Family or household member" means a spouse, family member, former spouse, parent, child, persons related by blood or marriage, persons who are in a dating relationship, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they are or have been married or have lived together at any time, and, for the purpose of the issuance of a domestic violence protection order, any other person with a sufficient relationship to the abusing person as determined by the court under section 14-07.1-02.
5. "Health officer" means the state health officer of the department.
6. "Law enforcement officer" means a public servant authorized by law or by a government agency to enforce the law and to conduct or engage in investigations of violations of law.
7. "Willfully" means willfully as defined in section 12.1-02-02.

SECTION 3. AMENDMENT. Section 14-07.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-02. ~~Adult abuse Protection~~ Domestic violence protection order.

1. An action for a protection order commenced by a verified application alleging the existence of ~~adult abuse~~ domestic violence may be brought in district court or county court by any ~~spouse, family member, former spouse, parent, child, persons related by blood, persons who are presently residing together or who have resided together in the past, persons who have a child in common regardless of whether they have been married or have lived together at any time~~ family or household member or by any other person if

the court determines that the relationship between that person and the alleged abusing person is sufficient to warrant the issuance of an adult abuse a domestic violence protection order. An action may be brought under this section, regardless of whether a petition for legal separation, annulment, or divorce has been filed.

2. Upon receipt of the application, the court shall order a hearing to be held not later than fourteen days from the date of the hearing order.
3. Service ~~shall~~ must be made upon the respondent ~~not less than~~ at least five days prior to the hearing. If service cannot be made, the court may set a new date.
4. Upon a showing of actual or imminent ~~adult abuse~~ domestic violence, the court may enter a protection order after due notice and full hearing. The relief provided by the court may include any or all of the following:
 - a. Restraining any party from threatening, molesting, or injuring any other person.
 - b. Excluding either the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person against whom the ~~adult abuse~~ domestic violence is occurring, or from ~~an adult abuse a domestic violence care facility~~, where if this exclusion is necessary to the physical or mental well-being of the applicant or others.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
 - d. Recommending or requiring that either or both parties undergo counseling with ~~an adult abuse a domestic violence~~ program or other agency ~~which~~ that provides professional services ~~which~~ that the court deems appropriate. The court may request a report from the designated agency within a time period established by the court. The costs of the court-ordered initial counseling assessment and subsequent reports ~~shall must~~ be borne by the parties or, if indigent, by the respondent's county of residence.
 - e. Requiring a party to pay such support as may be necessary for the support of a party and any minor children of the parties and reasonable attorneys fees and costs.
 - f. Awarding temporary use of personal property, including motor vehicles, to either party.
5. The court may amend its order or agreement at any time upon subsequent petition filed by either party.
6. No order or agreement under this section ~~shall affect~~ affects title to any real property in any matter.

SECTION 4. AMENDMENT. Section 14-07.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-03. Temporary protection order - Copy to law enforcement agency.

1. ~~Where~~ If an application under section 14-07.1-02 alleges an immediate and present danger of ~~abuse~~ domestic violence to the applicant, based upon an allegation of a recent incident of actual ~~abuse or threat of abuse~~ domestic violence, the court may grant an ex parte temporary protection order, pending a full hearing, granting such relief as the court deems proper.
2. An ex parte temporary protection order may include:
 - a. Restraining any party from committing acts of ~~abuse~~ domestic violence on another person.
 - b. Excluding the respondent or any person with whom the respondent lives from the dwelling they share, from the residence of another person, or from ~~an adult abuse~~ a domestic violence shelter care facility.
 - c. Awarding temporary custody or establishing temporary visitation rights with regard to minor children.
3. An ex parte temporary protection order ~~shall remain~~ remains in effect, in the court's discretion, for not more than thirty days, unless otherwise terminated by the court.
4. A full hearing as provided by section 14-07.1-02 ~~shall must~~ be set for not later than fourteen days from the issuance of the temporary order. The respondent ~~shall must~~ be served forthwith with a copy of the ex parte order along with a copy of the application and notice of the date set for the hearing.
5. The clerk of court shall transmit a copy of each temporary protection order, or extension, modification, or termination thereof, by the close of the business day on which the order was granted to the local law enforcement agency with jurisdiction over the residence of the applicant or over the residence at which the actual ~~abuse which~~ domestic violence that is the subject of the temporary protection order has occurred, or is likely to occur, if requested by the applicant and approved by the court. Each appropriate law enforcement agency may make available information as to the existence and current status of any temporary protection order issued pursuant to this section, through an existing verification system, to any law enforcement officer responding to the scene of reported domestic violence.
6. If the filing fee for filing the application has been waived by order of the court, the court may waive the fee for service of process by the sheriff or other appropriate law enforcement agency or may order the respondent to pay these costs.

SECTION 5. AMENDMENT. Section 14-07.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-04. Assistance of peace law enforcement officer in service or execution. When an order is issued upon request of the applicant under section 14-07.1-02 or 14-07.1-03, the court shall order the sheriff or other appropriate law enforcement officer to accompany the applicant and assist in placing the applicant in possession of the dwelling or residence, or otherwise assist in execution or service of the protection order, which may include assistance in referral to an adult abuse a domestic violence shelter care facility.

SECTION 6. AMENDMENT. Section 14-07.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-05. Right to apply for relief. A person's right to apply for relief under section 14-07.1-02 or 14-07.1-03 ~~shall~~ is not be affected by his or her leaving if the person leaves the residence or dwelling to avoid abuse domestic violence. The court shall may not require security or bond from any party unless it the court deems it necessary in exceptional cases.

SECTION 7. AMENDMENT. Section 14-07.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-06. Penalty for violation of a protection order —~~Arrest without warrant.~~ Whenever a protection order is granted pursuant to section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order is a class A misdemeanor and also constitutes criminal contempt of court subject to penalties therefor. ~~A peace officer may arrest any person without a warrant if:~~

- ~~1- The person has committed the offense of violating a protection order; whether or not the violation was committed in the presence of the officer; or~~
- ~~2- The peace officer has probable cause to believe the person; within four hours of the ascertainment of probable cause; has assaulted that person's spouse; other family member; former spouse; or any person with whom the person resides; although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this subsection without first observing that there has been recent physical injury to; or impairment of physical condition of; the alleged victim.~~

~~A peace officer may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.~~

SECTION 8. AMENDMENT. Section 14-07.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-07. Nonexclusive remedy. Any proceeding under this chapter shall be sections 14-07.1-01 through 14-07.1-08 is in addition to any other civil or criminal remedies.

SECTION 9. AMENDMENT. Section 14-07.1-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.1-08. Emergency relief. When the court is unavailable an application may be filed before a local magistrate, as defined by subsection 3 of section 29-01-14, who may grant relief in accordance with section 14-07.1-03, upon good cause shown in an ex parte proceeding, if it is deemed necessary to protect the applicant or others from ~~abuse~~ domestic violence. Immediate and present danger of ~~abuse~~ domestic violence to the applicant or others shall constitute good cause for purposes of this section. Any order issued under this section ~~shall expire~~ expires seventy-two hours after its issuance, unless continued by the court, or the local magistrate in the event of continuing unavailability of the court. At that time, the applicant may seek a temporary order from the court. Any order issued under this section and any documentation in support ~~thereof shall~~ of the order must be immediately certified to the court. ~~Such~~ The certification to the court ~~shall have~~ has the effect of commencing proceedings under section 14-07.1-02 and invoking the other provisions of this chapter.

SECTION 10. Section 14-07.1-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-10. Arrest procedures.

1. A law enforcement officer's decision to arrest and charge a person for a crime involving domestic violence may not be dependent on the specific consent of the victim, involve a consideration of the relationship of the parties, or be based solely on a request by the victim.
2. A law enforcement officer investigating a crime involving domestic violence may not threaten, suggest, or otherwise indicate, for the purpose of discouraging requests for law enforcement intervention, that family or household members will be arrested. When complaints are received from two or more family or household members, the officer shall evaluate each complaint separately to determine whether to seek an arrest warrant.

SECTION 11. Section 14-07.1-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-11. Arrest without warrant.

1. A law enforcement officer may arrest a person without a warrant if:
 - a. The person has committed the offense of violating a protection order under section 14-07.1-06, whether or not the violation was committed in the presence of the officer; or
 - b. The officer has probable cause to believe the person, within four hours of the ascertainment of probable cause, has assaulted that person's family or household member as defined in section 14-07.1-01, although the assault did not take place in the presence of the officer. A law enforcement officer may not arrest a person pursuant to this subdivision without first

observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim.

2. A law enforcement officer may not be held criminally or civilly liable for making an arrest pursuant to this section if the officer acts in good faith on probable cause and without malice.

SECTION 12. Section 14-07.1-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-12. Reports. A law enforcement officer shall make a written report of the investigation of any allegation of domestic violence regardless of whether an arrest was made. The officer shall submit the report to the officer's supervisor or to any other person to whom the officer is required to submit similar reports.

SECTION 13. Section 14-07.1-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-13. Order prohibiting contact - Penalty.

1. If a person charged with or arrested for a crime involving domestic violence is released from custody before arraignment or trial, the court authorizing the release of the person shall consider and may issue, if there is no outstanding restraining or protection order prohibiting the person from having contact with the victim, an order prohibiting the person from having contact with the victim. The order must contain the court's directives and must inform the person that any violation of the order constitutes a criminal offense. The court shall provide a copy of the order to the victim. The court shall determine at the time of the person's arraignment whether an order issued pursuant to this section will be extended. If the court issues an order pursuant to this section prior to the time the person is charged, the order expires at the person's arraignment or within seventy-two hours of issuance if charges against the person are not filed.
2. If the court has probable cause to believe that the person charged or arrested is likely to use, display, or threaten to use a firearm or dangerous weapon as defined in section 12.1-01-04 in any further acts of violence, the court may require that the person surrender for safekeeping any firearm or dangerous weapon in the person's immediate possession or control, or subject to the person's immediate possession or control, to the sheriff of the county or chief of police of the city in which the person resides.
3. Whenever an order prohibiting contact is issued, modified, extended, or terminated under this section, the clerk of court shall forward a copy of the order on or before the next business day to the appropriate law enforcement agency specified in the order. Upon receipt of the copy of the order, the law enforcement agency shall enter the order for one year or until the date of expiration specified by the order into any information system available in the state that is used by law enforcement agencies to list outstanding warrants. The order is enforceable in any jurisdiction in this state.

4. A person who willfully violates a court order issued under this section is guilty of a class A misdemeanor.

SECTION 14. Section 14-07.1-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-14. Law enforcement guidelines and training.

1. Every law enforcement agency shall develop and implement, with assistance from the criminal justice training and statistics division, specific operational guidelines for arrest policies and procedures in crimes involving domestic violence. The guidelines must include procedures for the conduct of criminal investigations, procedures for arrests and victim assistance by law enforcement officers, procedures concerning the provision of services to victims, and any additional procedures as may be necessary to carry out sections 14-07.1-02 through 14-07.1-14.
2. The peace officers standards and training board shall establish, in conjunction with the state's attorneys association, an education and training program for law enforcement officers and state's attorneys concerning the handling of crimes involving domestic violence. The training must stress the enforcement of criminal laws in domestic violence cases and the use of community resources.

SECTION 15. Section 14-07.1-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-15. Domestic violence prevention fund established. The domestic violence prevention fund is a special fund in the state treasury. The moneys accumulated in the fund are allocated to the department for distribution as provided by this chapter and within the limits of legislative appropriation. The fund is not subject to section 54-44.1-11.

SECTION 16. Section 14-07.1-16 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-16. Grants - Eligibility - Conditions - Limitation. The department shall administer moneys in the domestic violence prevention fund for grants to private nonprofit organizations that are engaged in providing emergency housing for victims of domestic violence and their dependents. An eligible entity must receive at least twenty-five percent of its funding from one or more local, municipal, or county sources, either in cash or in kind. Grants are renewable within the limits of legislative appropriation, if the applicant continues to meet the eligibility criteria established by this section and rules adopted by the department. Grant application deadlines may be included in any rules adopted to implement this section. No initial grant may exceed the amount of twenty thousand dollars per biennium, but any appropriated funds remaining unobligated after the first year of the biennium may be disbursed by the department as supplemental grants.

SECTION 17. Section 14-07.1-17 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-17. Duties of health officer. The health officer shall:

1. Respond to all applicants within sixty days after the deadline for receipt of applications, whether or not the applicant is eligible for funds.
2. Ensure that no more than ten percent of the moneys allocated to the domestic violence prevention fund in any biennium is expended for departmental administration of the grant program.
3. Distribute grants to eligible applicants in accordance with the purposes of sections 14-07.1-15 through 14-07.1-18.

SECTION 18. Section 14-07.1-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

14-07.1-18. Domestic violence program records - Confidentiality - Exceptions - Penalty.

1. All agents, employees, and volunteers participating in a domestic violence program shall maintain the confidentiality of the:
 - a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;
 - b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from a domestic violence program; and
 - c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under a domestic violence program.
2. The information described in subsection 1 is not subject to section 44-04-18 and may not be disclosed unless:
 - a. A client consents to the release of information that relates only to that client or the client's dependents;
 - b. The agent, employee, or volunteer operating a domestic violence program determines the disclosure of the information necessary for the efficient and safe operation of a domestic violence program; or for the protection of the safety of an employee, agent, volunteer, or client of a domestic violence program; or for the protection of a third party reasonably thought to be in need of protection;
 - c. A court of competent jurisdiction orders the disclosure; or
 - d. An agent, employee, or volunteer working with a domestic violence program has knowledge or reasonable cause to suspect a child has been abused or neglected as defined by section 50-25.1-02.
3. Any person who violates this section is guilty of an infraction.

SECTION 19. AMENDMENT. Subsection 8.1 of section 27-07.1-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 8.1. ~~Adult abuse~~ Domestic violence protection order proceedings. The county court has concurrent jurisdiction with the district court pursuant to chapter 14-07.1.

SECTION 20. AMENDMENT. Subsection 1 of section 29-06-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A peace law enforcement officer, without a warrant, may arrest a person:
 - a. For a public offense, committed or attempted in the officer's presence; and for the purpose of this subdivision a crime shall be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
 - b. When the person arrested has committed a felony, although not in the officer's presence.
 - c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
 - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
 - e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
 - f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
 - g. If the peace officer has probable cause to believe the person, within four hours of the ascertainment of probable cause, has assaulted that person's spouse, other family member, former spouse, or any person with whom the person resides, although the assault did not take place in the presence of the peace officer. A peace officer may not arrest a person pursuant to this subdivision without first observing that there has been recent physical injury to, or impairment of physical condition of, the alleged victim. For the offense of violating a protection order under section 14-07.1-06 or for an assault involving domestic violence pursuant to section 14-07.1-11.

* SECTION 21. REPEAL. Chapter 14-07.2 of the North Dakota Century Code and chapter 12-64 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 11, 1989
Filed April 12, 1989

* NOTE: Section 14-07.2-06 was amended by section 1 of Senate Bill No. 2289, chapter 179.

CHAPTER 178

SENATE BILL NO. 2398
(Senator Yockim)
(Representative Rydell)

DOMESTIC VIOLENCE IN CUSTODY DETERMINATIONS

AN ACT to amend and reenact sections 14-05-22 and 14-09-06.2 of the North Dakota Century Code, relating to the consideration of evidence of domestic violence by courts in determining rights to custody and visitation of children; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-05-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-05-22. Custody of children - Visitation rights.

1. In an action for divorce, the court, before or after judgment, may give such direction for the custody, care, and education of the children of the marriage as may seem necessary or proper, and may vacate or modify the same at any time. Any award or change of custody must be made in accordance with the provisions of chapter 14-09.
2. After making an award of custody, the court shall, upon request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a parent-child relationship that will be beneficial to the child, unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health.
3. In awarding custody or granting rights of visitation, the court shall consider evidence of domestic violence and, if the court finds that domestic violence has occurred, shall give direction for the custody of children of the marriage and grant rights of visitation in a manner that best protects the children and the parent or other family or household member who is the victim of domestic violence from any further harm. As used in this section, "domestic violence" means domestic violence as defined in section 12-64-01 or, if Senate Bill No. 2454 is approved by the fifty-first legislative assembly and becomes effective, section 14-07.1-01. The court also shall consider the interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent, and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

SECTION 2. AMENDMENT. Section 14-09-06.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-09-06.2. Best interests and welfare of child - Court consideration - Factors.

1. For the purpose of custody, the best interests and welfare of the child ~~shall be~~ is determined by the court's consideration and evaluation of all factors affecting the best interests and welfare of the child. These factors include all of the following when applicable:
 - ~~1-~~ a. The love, affection, and other emotional ties existing between the parents and child.
 - ~~2-~~ b. The capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child.
 - ~~3-~~ c. The disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.
 - ~~4-~~ d. The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
 - ~~5-~~ e. The permanence, as a family unit, of the existing or proposed custodial home.
 - ~~6-~~ f. The moral fitness of the parents.
 - ~~7-~~ g. The mental and physical health of the parents.
 - ~~8-~~ h. The home, school, and community record of the child.
 - ~~9-~~ i. The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
 - ~~10-~~ j. The existence of domestic violence. If the court finds that domestic violence has occurred, the court shall provide for a custody arrangement that best protects the child and the parent or other family or household member who is the victim of domestic violence from any further harm. As used in this subdivision, "domestic violence" means domestic violence as defined in section 12-64-01 or, if Senate Bill No. 2454 is approved by the fifty-first legislative assembly and becomes effective, section 14-07.1-01.
 - k. The interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests. The court shall consider that person's history of inflicting, or tendency to inflict, physical harm, bodily

injury, assault, or the fear of physical harm, bodily injury, or assault, on other persons.

1. Any other factors considered by the court to be relevant to a particular child custody dispute.
2. In any proceeding under this chapter, the court, at any stage of the proceedings after final judgment, may make orders about what security is to be given for the care, custody, and support of the unmarried minor children of the marriage as from the circumstances of the parties and the nature of the case is equitable.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 179

SENATE BILL NO. 2289
(Senators Waldera, Heinrich, Holmberg)
(Representatives R. Anderson, Rydell, J. DeMers)

SEXUAL ASSAULT PROGRAM RECORDS

AN ACT to amend and reenact section 14-07.2-06 of the North Dakota Century Code, relating to the confidentiality of sexual assault program records; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 14-07.2-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-07.2-06. Adult abuse or sexual assault program records - Confidentiality - Exceptions - Penalty.

1. All agents, employees, and volunteers participating in an adult abuse or sexual assault program shall maintain the confidentiality of the:
 - a. Address, telephone number, and other identifying information of a shelter, safe home, and place of emergency safe housing;
 - b. Name, address, telephone number, personally identifying information, and case file or history of any client receiving services from an adult abuse or sexual assault program; and
 - c. Name, address, telephone number, and other identifying information of an agent, employee, or volunteer providing services under an adult abuse or sexual assault program.
2. The information described in subsection 1 is excepted from the public records disclosure requirements of section 44-04-18 and may not be disclosed unless:
 - a. A client consents to the release of information which relates only to that client or the client's dependents;
 - b. The agent, employee, or volunteer operating an adult abuse or sexual assault program determines the disclosure of the information necessary for the efficient and safe operation of an adult abuse or sexual assault program; or for the protection of the safety of an employee, agent, volunteer, or client of an adult abuse or sexual assault program; or for the protection of a third party reasonably thought to be in need of protection;
 - c. A court of competent jurisdiction orders the disclosure; or

* NOTE: Chapter 14-07.2 was repealed by section 21 of Senate Bill No. 2454, chapter 177.

- d. An agent, employee, or volunteer working with an adult abuse or sexual assault program has knowledge or reasonable cause to suspect a child has been abused or neglected as is defined by section 50-25.1-02.
3. Any person who violates this section is guilty of an infraction.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 180

SENATE BILL NO. 2356
(Senator Stenehjem)
(Representative J. DeMers)

SUPPORT ORDER MODIFICATION

AN ACT to create and enact two new sections to chapter 14-09 of the North Dakota Century Code, relating to modification of support obligations for children after majority and the duration of support obligations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Modification of support for children after majority.

1. In the absence of a written agreement to the contrary entered into after the effective date of this Act, a judgment or order requiring the payment of child support until the child attains majority is deemed to be modified to continue as to the child until the end of the month during which the child is graduated from high school or attains the age of nineteen years, whichever occurs first, if:
 - a. The child is enrolled and attending high school and is eighteen years of age prior to the date the child is expected to be graduated; and
 - b. The child resides with the person to whom the duty of support is owed.
2. The person to whom the duty of support is owed shall file an affidavit with the district court stating that the child has been continuously enrolled in high school and is, or will be, eighteen years of age prior to the date the child is expected to be graduated. The affidavit must be served by the person to whom the duty of support is owed upon the person owing the duty of support. Upon the filing of the affidavit, the judgment or order is deemed modified pursuant to subsection 1, unless the person owing the duty of support files a motion with the court, within twenty days subsequent to service of the affidavit, requesting a hearing on the need to modify the judgment or order.

SECTION 2. A new section to chapter 14-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Duration of child support obligations. A judgment or order requiring the payment of child support continues as to the child until the end of the month in which the support obligation terminates.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 181

SENATE BILL NO. 2048
(Legislative Council)
(Interim Judiciary Committee)

AIDS TESTING

AN ACT to create and enact a new section to chapter 23-06.1 and two new sections to chapter 23-07 of the North Dakota Century Code, relating to testing anatomical gifts for exposure to the human immunodeficiency virus and to testing of inmates, certain convicted individuals, and hospital patients for exposure to the human immunodeficiency virus; and to amend and reenact sections 14-10-17, 19-02.1-19, 23-07-01, 23-07-03, 23-07-07, 23-07-08, 23-07-09, 23-07-21, and 53-03-03 of the North Dakota Century Code, relating to sexually transmitted disease.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-10-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-10-17. Minors - Treatment for ~~venereal~~ sexually transmitted disease - Drug abuse - Alcoholism. Any person of the age of fourteen years or older may contract for and receive examination, care, or treatment for ~~venereal~~ sexually transmitted disease, alcoholism, or drug abuse without permission, authority, or consent of a parent or guardian.

SECTION 2. AMENDMENT. Section 19-02.1-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-19. False advertising.

1. An advertisement of a food, drug, device, or cosmetic ~~shall be deemed to be~~ is false if it is false or misleading in any particular.
2. For the purpose of this chapter the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sexually transmitted disease, sinus infection, smallpox, tuberculosis, tumors, typhoid, or uremia-~~venereal disease; shall~~ is also be deemed to be false, except that no advertisement not in violation of subsection 1 ~~shall be deemed to be~~ is false under this subsection if it is disseminated only to members of the medical, dental, pharmaceutical, or veterinary professions, or appears only in the scientific periodicals of these

professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices; provided, that whenever the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the department by rule shall ~~by regulation~~ authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health; and provided, further, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

* SECTION 3. A new section to chapter 23-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Anatomical parts testing - Exception. No anatomical parts of human bodies, including whole blood, plasma, blood products, blood derivatives, semen, body tissue, organs, and parts of organs or products derived from parts of organs may be used for injection, transfusion, or transplantation into a human body unless the anatomical parts or the donor have been examined for the presence of antibodies to or antigens of the human immunodeficiency virus and the test is negative for the presence of such antibodies or antigens. The testing requirement of this section does not apply if, in a medical emergency constituting a serious threat to the life of a potential anatomical part recipient, a required anatomical part that has been subjected to the testing required under this section is not available. The state department of health and consolidated laboratories may adopt rules to implement the requirements of this section.

SECTION 4. AMENDMENT. Section 23-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-01. Powers of state department of health and consolidated laboratories. The state department of health and consolidated laboratories shall designate the diseases ~~which shall~~ that must be reported as prescribed in this chapter, and it may classify such diseases as contagious or infectious, ~~veneraeal~~ sexually transmitted, and dangerous.

SECTION 5. AMENDMENT. Section 23-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-03. Report of cases of ~~veneraeal~~ sexually transmitted disease. The superintendent or manager of a hospital, dispensary, or charitable or penal institution, in which there is a case of ~~veneraeal~~ sexually transmitted disease, or the superintendent's designee, shall report such case to the nearest health officer having jurisdiction. The report ~~shall~~ must be made in the form and manner directed by the state department of health and consolidated laboratories.

SECTION 6. AMENDMENT. Section 23-07-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-07. ~~Veneraeal~~ Sexually transmitted diseases - Additional powers and duties of health officers. The state health officer, and each district, county, and city health officer within ~~his~~ the officer's jurisdiction, when necessary for the protection of public health, shall:

* NOTE: Section 3 of Senate Bill No. 2048 was codified as NDCC section 23-06.2-11.1 because NDCC chapter 23-06.1 was repealed by Senate Bill No. 2055, chapter 303.

1. Make examination of any person reasonably suspected of being infected with ~~venereal~~ a sexually transmitted disease and detain ~~such~~ that person until the results of the examination are known.
2. Require any person infected with ~~venereal~~ a sexually transmitted disease to report for treatment to a reputable physician and to continue such treatment until ~~he is cured or to submit to, if incurable, continue indefinitely such treatment provided at public expense until he is cured as recommended by the physician.~~
3. Require any person infected with a sexually transmitted disease to be examined or tested for the presence of antibodies to or antigens of the human immunodeficiency virus. The state health officer shall designate sexually transmitted diseases for which contact tracing is appropriate. If contact tracing is appropriate, the attending physician, or health officer if authorized by the attending physician, shall notify the following individuals regarding possible exposure to contagious disease:
 - a. Known sexual partners of an individual infected with a sexually transmitted disease.
 - b. Individuals who either have been, or may be, exposed to an individual infected with a sexually transmitted disease in a manner that creates an epidemiologically demonstrated risk of transmission.
4. Investigate sources of infection of ~~venereal disease~~ sexually transmitted diseases.
- 4- 5. Cooperate with the proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution, including providing proper officials with all relevant information available concerning individuals who are infected with the human immunodeficiency virus and who are engaged in prostitution.

SECTION 7. A new section to chapter 23-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Testing of inmates and convicted individuals for exposure to the human immunodeficiency virus - Reporting - Liability.

1. The following individuals must be examined or tested for the presence of antibodies to or antigens of the human immunodeficiency virus:
 - a. Every individual convicted of a crime who is imprisoned for fifteen days or more in a grade one or grade two jail, a regional correctional facility, or the state penitentiary;
 - b. Every individual, whether imprisoned or not, who is convicted of a sexual offense under chapter 12.1-20, except for those convicted of violating sections 12.1-20-10, 12.1-20-12.1, and 12.1-20-13; and

- c. Every individual, whether imprisoned or not, who is convicted of an offense involving the use of a controlled substance, as defined in chapter 19-03.1, and the offense involved the use of paraphernalia, including any type of syringe or hypodermic needle, that creates an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus.
2. The results of any positive or reactive test must be reported to the state department of health and consolidated laboratories in the manner prescribed by the department. Subsection 1 does not require the testing of an individual before sentencing or the testing of an individual held in a jail or correctional facility awaiting transfer to the state penitentiary.
3. A licensed physician, nurse, technician, or employee of a hospital or clinic who draws blood from any person for the purpose of conducting a test required by this section is not liable in any civil action for damages arising out of such action except for an act or omission that constitutes gross negligence.

SECTION 8. A new section to chapter 23-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Rules. The department may adopt rules under chapter 28-32 for the efficient enforcement of this chapter.

SECTION 9. AMENDMENT. Section 23-07-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-08. Persons in prison examined and treated for ~~venereal~~ sexually transmitted diseases. Every person convicted of a crime who is imprisoned fifteen days or more in a state, county, or city prison ~~shall~~ must be examined for ~~venereal~~ sexually transmitted disease and if infected, shall be treated therefor by the health officer within whose jurisdiction ~~such~~ the person is imprisoned.

SECTION 10. AMENDMENT. Section 23-07-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-09. ~~Venereal~~ Sexually transmitted diseases - Persons isolated in prison - Exceptions. The prison authorities of any state, county, or city prison shall make available to the health officers such portion of the prison as may be necessary for a clinic or hospital wherein the following persons may be isolated and treated ~~at public expense until cured~~:

1. Persons who are imprisoned in ~~such~~ the prison and who are infected with ~~venereal~~ a sexually transmitted disease.
2. Persons who are suffering with ~~venereal~~ a sexually transmitted disease at the time of the expiration of their term of imprisonment.
3. Persons isolated or quarantined by the health officer when no other suitable place for isolation or quarantine is available.

In lieu of such isolation, any of such persons, in the discretion of the health officer, may be required to report for treatment to a licensed

physician or to submit to treatment provided at public expense until cured. ~~Nothing contained in this. This section shall may not~~ be construed to interfere with the service of any sentence imposed by a court as punishment for the commission of crime.

* SECTION 11. AMENDMENT. Section 23-07-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-21. Penalties. ~~Any~~ A person is guilty of an infraction:

1. Who violates or fails to obey any ~~of the provisions~~ provision of this chapter, any lawful rule or regulation made by the state department of health and consolidated laboratories, or any order issued by any state, district, county, or municipal health officer;
2. Who violates any quarantine law or regulation, or who leaves a quarantined area without being discharged; or
3. Who, knowing that ~~he the person~~ is infected with a ~~venereal~~ sexually transmitted disease, willfully exposes another person to infection.

is guilty of an infraction.

SECTION 12. AMENDMENT. Section 53-03-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-03-03. Permit required - Terms upon which granted. A permit to conduct a carnival ~~shall must~~ be granted upon the condition, and the contract ~~shall must~~ state, that there ~~shall may~~ not be:

1. Set up or operated any gambling device, lottery, number or paddle wheel, number board, punchboard, or other game of chance or skin game of any kind; or
2. Any lewd, lascivious, or indecent show, indecent exposure of the person, suggested lewdness or immorality, any indecent dance, ~~men only show~~ where ~~women or girls~~ persons perform, or any other lewd, immoral, or indecent show or attraction; or
- 3- ~~Knowingly allowed or permitted to follow or be connected with such carnival any man or woman infected with venereal disease.~~

Approved April 7, 1989
Filed April 7, 1989

* NOTE: Section 23-07-21 was also amended by section 4 of Senate Bill No. 2049, chapter 310.

CHAPTER 182

HOUSE BILL NO. 1231
(Representatives J. DeMers, P. DeMers, Wentz)
(Senators J. Meyer, Nalewaja)

ADOPTION INFORMATION DISCLOSURE

AN ACT to amend and reenact subsections 4 and 9 of section 14-15-16 of the North Dakota Century Code, relating to disclosure of adoption information under the Revised Uniform Adoption Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 9 of section 14-15-16 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. An adopted person who is ~~twenty-one~~ eighteen years of age or over may request the department of human services to secure and disclose information identifying the adopted child's genetic parents or to secure and disclose nonidentifying information not on file with the board or a child-placing agency. The department of human services shall, within five working days of receipt of the request, notify in writing the child-placing agency having access to the information requested of the request by the adopted child. If there has not been established a presumed or adjudicated father under chapter 14-17 then a "genetic parent" includes for the purposes of a request to secure and disclose nonidentifying information not on file with the department or child-placing agency, the alleged father as indicated in the files of the child-placing agency; provided, that there exists in the file information which corroborates the allegation of paternity, including the existence of communications between the alleged father and child-placing agency, or between the alleged father and the natural or adjudicated mother or members of her family, or such other corroborative information permitted by rules adopted by the department of human services.
9. Any adopted person ~~twenty-one~~ eighteen or more years of age whose adoption was finalized in this state or whose genetic parents had their parental rights terminated in this state may request the department of human services to secure and disclose identifying information concerning an adult sibling in the same manner as provided for in subsection 4. Identifying information pertaining exclusively to the adult sibling, whether part of the permanent record of a file in the department of human services or in an agency, may be released only upon written consent of the adult sibling and any living genetic parents of the adult sibling if the adult sibling knows of their identity.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 183

SENATE BILL NO. 2459
(Senators Mathern, Robinson)
(Representative Wentz)

PARENTAL RIGHTS TERMINATION RIGHT TO COUNSEL

AN ACT to create and enact a new section to chapter 14-15 of the North Dakota Century Code, relating to the right to counsel in termination proceedings under the Revised Uniform Adoption Act; and to amend and reenact sections 14-17-18 and 27-20-45 of the North Dakota Century Code, relating to the right to counsel in termination proceedings under the Uniform Parentage Act and the Uniform Juvenile Court Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Right to counsel. A parent who consents to the adoption of a minor, under section 14-15-05, is entitled to legal counsel during all stages of a proceeding to terminate the parent and child relationship under section 14-15-19 if the minor is to be placed for adoption by a child-placing agency licensed under chapter 50-12. The parent may retain counsel of the parent's own choosing and at the parent's own expense, or, if indigent, the parent may request the court to order, upon which the court shall order, that a state's attorney serve as legal counsel to the parent at no cost to the parent. As an alternative to the state's attorney serving as legal counsel to the parent, the state's attorney may request the court to order, upon which the court may order, if a conflict is shown to exist, that other legal counsel services that may be available be provided to the parent at no cost to the parent. These alternative legal counsel services include counsel services for indigent persons. Prior to the termination proceeding held under section 14-15-19, the court or a person designated by the court shall inform the parent of the right to counsel provided by this section.

SECTION 2. AMENDMENT. Section 14-17-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

14-17-18. Right to counsel - Free transcript on appeal.

1. At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.
2. A parent who relinquishes or proposes to relinquish a minor for adoption, under section 14-17-24, is entitled to legal counsel during all stages of a proceeding to terminate the parent and child relationship under that section if the child is to be placed for adoption by a child-placing agency licensed under chapter 50-12. The parent may retain counsel of the parent's own choosing and at

the parent's own expense, or, if indigent, the parent may request the court to order, upon which the court shall order, that a state's attorney serve as legal counsel to the parent at no cost to the parent. As an alternative to the state's attorney serving as legal counsel to the parent, the state's attorney may request the court to order, upon which the court may order, if a conflict is shown to exist, that other legal counsel services that may be available be provided to the parent at no cost to the parent. These alternative legal counsel services include counsel services for indigent persons. Prior to the termination proceeding held under section 14-17-24, the court or a person designated by the court shall inform the parent of the right to counsel provided by this section.

3. If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

SECTION 3. AMENDMENT. Section 27-20-45 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-45. Proceeding for termination of parental rights.

1. The petition shall comply with section 27-20-21 and state clearly that an order for termination of parental rights is requested and that the effect thereof will be as stated in the first sentence of section 27-20-46.
2. If both of the natural parents of the child are not named in the petition either as petitioner or as respondent, the court shall cause inquiry to be made of the petitioner and other appropriate persons in an effort to identify an unnamed parent. The inquiry shall include, to the extent necessary and appropriate, all of the following:
 - a. Whether any man is presumed to be the father of the child under the Uniform Parentage Act.
 - b. Whether the natural mother of the child was cohabiting with a man at the time of conception or birth of the child.
 - c. Whether the natural mother of the child has received from any man support payments or promises of support with respect to the child or in connection with her pregnancy.
 - d. Whether any person has formally or informally acknowledged or declared his possible parentage of the child.
 - e. Whether any person claims any right to custody of the child.
3. The court shall add as respondent to the petition and cause to be served with a summons any person identified by the court as an unnamed parent, unless the person has relinquished parental rights, or parental rights have been previously terminated by a court.
4. If the court, after inquiry, is unable to identify an unnamed parent and no person has appeared in the proceeding claiming to be

an unnamed parent of the child or to have any right of custody of the child, the court shall enter an order terminating all parental rights of the unnamed parent with reference to the child and the parent and child relationship.

5. If a petition for termination of parental rights is made by a parent of the child under this section or if a parent consents to termination of parental rights under section 27-20-44, that parent is entitled to legal counsel during all stages of a proceeding to terminate the parent and child relationship if the child is to be placed for adoption by a child-placing agency licensed under chapter 50-12. The parent may retain counsel of the parent's own choosing and at the parent's own expense, or, if indigent, the parent may request the court to order, upon which the court shall order, that a state's attorney serve as legal counsel to the parent at no cost to the parent. As an alternative to the state's attorney serving as legal counsel to the parent, the state's attorney may request the court to order, upon which the court may order, if a conflict is shown to exist, that other legal counsel services that may be available be provided to the parent at no cost to the parent. These alternative legal counsel services include counsel services for indigent persons. Prior to the termination proceeding held under this chapter, the court or a person designated by the court shall inform the parent of the right to counsel provided by this subsection.
6. Subject to the disposition of an appeal, upon the expiration of thirty days after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, including the petitioner, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless the person retained custody of the child.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 184

HOUSE BILL NO. 1307
(Representative Wentz)
(Senator J. Meyer)

ASSISTED CONCEPTION ACT

AN ACT to adopt the Uniform Status of Children of Assisted Conception Act; and to amend and reenact section 12.1-31-05 of the North Dakota Century Code, relating to child procurement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 7 of this Act:

1. "Assisted conception" means a pregnancy resulting from insemination of an egg of a woman with sperm of a man by means other than sexual intercourse or by removal and implantation of an embryo after sexual intercourse, but does not include the pregnancy of a wife resulting from the insemination of her egg using her husband's sperm.
2. "Donor" means an individual whose body produces sperm or egg used for the purpose of assisted conception, whether or not a payment is made for the sperm or egg used, but does not include a woman who gives birth to a resulting child.
3. "Surrogate" means an adult woman who enters into an agreement to bear a child conceived through assisted conception for intended parents.

SECTION 2. Maternity. A woman who gives birth to a child is the child's mother.

SECTION 3. Assisted conception by married woman. The husband of a woman who bears a child through assisted conception is the father of the child, notwithstanding any declaration of invalidity or annulment of the marriage obtained after the assisted conception, unless within two years after learning of the child's birth the husband commences an action in which the mother and child are parties and in which it is determined that the husband did not consent to the assisted conception.

SECTION 4. Parental status of donors and deceased persons.

1. A donor is not the parent of a child conceived through assisted conception.
2. A person who dies before a conception using his sperm or her egg is not a parent of any resulting child born of the conception.

SECTION 5. Surrogate agreements. Any agreement in which a woman agrees to become a surrogate or to relinquish her rights and duties as parent of a child conceived through assisted conception is void. The surrogate, however, is the mother of a resulting child and the surrogate's husband, if a party to the agreement, is the father of the child. If the surrogate's husband is not a party to the agreement or the surrogate is unmarried, paternity of the child is governed by chapter 14-17.

SECTION 6. Relation of parent and child. A child whose status as a child is declared or negated by sections 1 through 7 of this Act is the child only of his or her parent or parents as determined under sections 1 through 7 of this Act for all purposes, including succession and gift rights in section 7 of this Act.

SECTION 7. Succession and gift rights. Unless superseded by later events forming or terminating a parent and child relationship, the status of parent and child declared or negated by sections 1 through 7 of this Act as to a given individual and a child born alive controls for purposes of:

1. Intestate succession;
2. Probate law exemptions, allowances, or other protections for children in a parent's estate; and
3. Determining eligibility of the child or the child's descendants to share in a donative transfer from any person as a member of a class determined by reference to the relationship.

SECTION 8. AMENDMENT. Section 12.1-31-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-31-05. Child procurement - Penalty. Except with respect to fees and charges authorized by law or approved by a court in a proceeding related to the placement of a minor child for adoption or related to the adoption of a minor child, a person is guilty of child procurement, a class C felony, if the person knowingly offers, gives, or agrees to give to another or solicits, accepts, or agrees to accept from another, a thing of value as consideration for the recipient's furnishing or aiding another to furnish a minor child for the purposes of adoption. This section does not apply to parties to any agreement in which a woman agrees to become a surrogate, as defined in section 1 of this Act, or to relinquish her rights and duties as parent of a child conceived through assisted conception, as defined in section 1 of this Act.

Approved April 3, 1989
Filed April 3, 1989

EDUCATION

CHAPTER 185

HOUSE BILL NO. 1464
(Representatives Gerntholz, V. Olson)
(Senator Robinson)

LAND SALE TO VALLEY CITY

AN ACT to authorize the state board of higher education to convey certain state-owned land to the city of Valley City, North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Transfer of land by state board of higher education.

1. The state board of higher education may convey to the city of Valley City, North Dakota, land owned by the state under the jurisdiction of the state board of higher education which is located in Barnes County and described as follows:

A tract of land in block 8 of Andrus and Siftons Addition to Valley City, North Dakota, more particularly described as follows: beginning at the southeast corner of said block, thence north along the east line of said block 105 feet; thence north $89^{\circ}29'$ west 297.9 feet; thence south $58^{\circ}35'$ west 198.5 feet to a point on the south line of said block; thence south $89^{\circ}29'$ east along said south line 466.4 feet to the point of beginning. Said tract of land contains 0.92 acres more or less. A strip of land lying in that tract of land owned by the state of North Dakota in the south half of the northeast quarter of section twenty-eight, township one hundred forty north, range fifty-eight west of the fifth principal meridian; said strip of land being 160 feet wide, 80 feet on either side of a center line more particularly described as follows: beginning at a point which is the intersection of the east line of the said northeast quarter and the center line of Seventh Street southeast in the city of Valley City, North Dakota; thence north $89^{\circ}29'$ west along said center line extended 1.5 feet; thence by a 6° curve to the left 532.2 feet; thence south $58^{\circ}35'$ west 173.9 feet; thence by a 4° curve to the right 780.8 feet; thence south $89^{\circ}49'$ west parallel with and with a width of 80 feet more or less on the left from the south line of the above described tract 575.1 feet; thence by a 14° curve to the left 258.8 feet to a point on said south line, excepting therefrom all that part lying within that part of block 8 of Andrus and Siftons Addition to Valley City, North Dakota, described as follows: beginning at the southeast corner of said block 8, thence north along the east line of said block 105 feet; thence north $89^{\circ}29'$ west 297.9 feet; thence south $58^{\circ}35'$ west 198.5 feet to a point on the south line of said block; thence south $89^{\circ}29'$ east along said south line 466.4

feet to the point of beginning. The above strip of land contains 7.60 acres more or less.

2. The conveyance authorized by this Act is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
3. All legal documents, papers, and instruments required by the conveyance authorized by this Act must be reviewed and approved as to form and legality by the attorney general.
4. If the property is subsequently vacated for road purposes by the city of Valley City, title thereto, notwithstanding the provisions of section 40-39-08, remains with the city and the property may be subsequently transferred or exchanged by the city.
5. As a condition of this conveyance, the state is not subject to or responsible for any special assessments hereinafter levied for the construction or surfacing of any road that replaces the roadway vacated.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 186

SENATE BILL NO. 2124

(Committee on Education)

(At the request of the State Board of Higher Education)

VALLEY CITY HIGHER EDUCATION LAND SALE

AN ACT authorizing the state board of higher education to sell certain real property in Valley City, North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Notwithstanding the provisions of sections 54-01-05.2 and 54-01-05.5, the state board of higher education is authorized to sell the following described real property to the parties, for the price, and on the terms as determined by the state board of higher education. The property, known as Lions Court, is more fully described as lots 17, 18, and 19, block 2, Tracy's second addition to the city of Valley City, Barnes County, state of North Dakota.

SECTION 2. Income from the sale of the property described in section 1 of this Act must be deposited in the auxiliary funds account of Valley City state university.

Approved March 28, 1989

Filed March 28, 1989

CHAPTER 187

SENATE BILL NO. 2532
(Senator Robinson)
(Representatives Gerntholz, V. Olson)
(Approved by the Committee on Delayed Bills)

LAND TRANSFER TO BARNES COUNTY

AN ACT to authorize the state board of higher education to convey certain state-owned land; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Transfer of land by state board of higher education. The state board of higher education may convey to the parties and on the terms as the board directs the following described property located in Barnes County:

The southwest quarter of section two, township one hundred forty-one north, range sixty-one west of the fifth principal meridian, consisting of one hundred sixty acres more or less.

The conveyance authorized by this Act is not subject to North Dakota Century Code sections 54-01-05.2 and 54-01-05.5. All legal documents, papers, and instruments required by the conveyance authorized by this Act must be reviewed and approved as to form and legality by the attorney general.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 188

HOUSE BILL NO. 1556
(W. Williams)

BOARD OF UNIVERSITY AND SCHOOL LANDS REFUNDS

AN ACT to create and enact subsection 5 of section 15-01-02 of the North Dakota Century Code, relating to the authority of the board of university and school lands to issue refunds; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subsection 5 of section 15-01-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

5. Authority to expend moneys for the purpose of making refunds in cases in which an error has been made by the board, or a person dealing with the board, with regard to any of the lands, minerals, funds, proceeds, or any other kind of property managed by the board. Moneys expended to make refunds must come from the same fund or account into which the money to be refunded was originally placed.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 189

SENATE BILL NO. 2181
(Committee on State and Federal Government)
(At the request of the Board of University and School Lands)

BOARD OF UNIVERSITY AND SCHOOL LANDS MEETINGS

AN ACT to amend and reenact section 15-01-03 of the North Dakota Century Code, relating to meetings of the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-01-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-01-03. Meetings of board - Quorum. The board shall meet ~~at the office of the commissioner~~ on the last Thursday of each month. If it appears a quorum will not be present for any meeting of the board, the meeting may be rescheduled by the commissioner upon reasonable notice to all members. Special meetings of the board may be held at any time at the written call of the chairman, the commissioner, or ~~of~~ any two members of the board. Three members of the board shall constitute a quorum.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 190

SENATE BILL NO. 2493
(Senators Lips, Satrom, Heinrich)
(Representative R. Berg)

UNIVERSITY AND SCHOOL LANDS INVESTMENTS

AN ACT to create and enact two new sections to chapter 15-03 of the North Dakota Century Code; and to amend and reenact section 15-03-04 of the North Dakota Century Code, relating to investments and calculation and distribution of investment income of the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-03-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-03-04. Legal investments. Subject to the provisions of section 15-03-05, the board of university and school lands shall invest the money belonging to the permanent funds under its control in the following securities and investments:

1. First mortgages on farmlands and improvements thereon in this state to the extent such mortgages are guaranteed or insured by the United States or any instrumentality thereof; or if not so guaranteed or insured, not exceeding in amount eighty percent of the actual value of the property on which the same may be loaned; such value to be determined by competent appraisal.
2. Securities which are a direct obligation of the treasury of the United States or of an instrumentality thereof.
3. Bonds or certificates of indebtedness of this state.
4. General obligation bonds of any other state.
5. Bonds, certificates of indebtedness, or warrants of any political subdivision of this state which constitute the general or contingent general obligations of the issuing tax authority; or revenue bonds of a political subdivision issued for public utility purposes or under the authority of chapter 40-57.
6. Loans and mortgage investments, insured or guaranteed in any manner, wholly or in part, or for which a commitment to so insure or guarantee has been issued by the United States or any instrumentality or agency thereof; or other investments that are issued by or fully insured or guaranteed by the United States or any instrumentality or agency thereof or this state or any instrumentality or agency thereof.

* NOTE: Section 15-03-04 was also amended by section 1 of House Bill No. 1291, chapter 191.

- 7- Bank of North Dakota certificates of deposit-
- 8- North Dakota savings and loan association and commercial bank certificates of deposit to the extent that such certificates are fully insured or guaranteed by the United States or an instrumentality or agency thereof-
- 9- Short-term commercial and finance company paper traded on a national basis and issued by a corporation having a record of no default of obligations during the ten years preceding such investment and whose net income available for fixed charges for a period of five fiscal years immediately preceding such investment and during the last year of such period shall have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period-
- 10- Bonds, notes, or debentures of any corporation duly incorporated under the laws of any state of the United States rated as "A" or higher by a nationally recognized rating service approved by the board-
- 11- Nonrated bonds, notes, or debentures of any corporation duly incorporated under the laws of any state and whose principal business operations are carried on within this state, having a record of no default of obligations during the ten years preceding such investment and whose net income available for fixed charges for a period of five fiscal years immediately preceding such investment and during the last year of such period, shall have averaged per year not less than one and one-half times its average annual fixed charges applicable to such period-
- 12- Evidence of indebtedness issued by instrumentalities of this state, including evidence of indebtedness issued by the North Dakota housing finance agency-
- 13- Mortgage loans purchased from lenders or certificates of indebtedness representing pools of mortgage loans purchased from lenders if the mortgages are made to persons to finance the purchase or substantial rehabilitation of owner-occupied, single family residential dwellings, including mobile homes and manufactured housing. The loans purchased must be secured by mortgages on real property located in this state. "Lender" means any bank or trust company chartered in this state, any national banking association located in this state, any state or federal savings and loan association located in this state, and any federal housing administration approved mortgagee or other mortgage lending institution engaged in home mortgage lending in this state-
- 14- Common or preferred stocks of any corporation organized under the laws of any state, including nonvoting preferred stock of Myron G. Nelson Fund, incorporated, issued pursuant to section 10-30.2-04 but not more than twenty percent of the assets of each fund may be invested in common and preferred stocks-

As used in this section, the term "net income" means income after deducting operating and maintenance expenses, all taxes, depreciation and

depletion; but excluding extraordinary nonrecurring items of income and expense.

The term "fixed charges" includes interest on funded and unfunded debt, amortization of debt discount and expense, and rentals for leased property. apply the prudent investor rule in investing the permanent funds under its control. The "prudent investor rule" means that in making investments the board shall exercise the same judgment and care, under the circumstances then prevailing and limitations of North Dakota and federal law, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income.

SECTION 2. Two new sections to chapter 15-03 of the North Dakota Century Code are hereby created and enacted to read as follows:

Calculation of investment income. At the end of each fiscal year, the board shall calculate the investment income earned by the permanent funds. The investment income earned by the funds shall equal the amount of interest on debt securities and dividends on equity securities. If the sale of securities results in a net gain or loss during a fiscal year, the net gain or loss shall be amortized to investment income in equal annual installments over a ten-year period. In lieu of amortizing any fiscal year net loss on the sale of securities, the board may recover such loss, in whole or in part, from past unamortized capital gains and future net realized capital gains.

Distribution of investment income. The board shall distribute only that portion of the investment income that is consistent with the long-term goals of preserving the purchasing power of the funds and maintaining income stability to the fund beneficiaries. The investment income that is retained to preserve the purchasing power of the principal shall be added to the principal and remain inviolate. No investment income may be retained and added to the principal if it would result in a decrease in distributions to the common schools or other fund beneficiaries from the amount distributed during the preceding year.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 191

HOUSE BILL NO. 1291
(Graba, Starke)

BOARD OF UNIVERSITY AND SCHOOL LANDS INVESTMENTS

AN ACT to amend and reenact subsection 8 of section 15-03-04 of the North Dakota Century Code, relating to types of legal investments by the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 8 of section 15-03-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. ~~North Dakota savings and loan association and commercial bank certificates~~ Certificates of deposit issued by financial institutions as defined in section 21-04-01 to the extent that such certificates are fully insured or guaranteed by the United States or an instrumentality or agency thereof.

Approved March 14, 1989
Filed March 15, 1989

* NOTE: Section 15-03-04 was also amended by section 1 of Senate Bill No. 2493, chapter 190.

CHAPTER 192

SENATE BILL NO. 2211
(Committee on State and Federal Government)
(At the request of the Board of University and School Lands)

STATE LAND LEASES OR SALES

AN ACT to amend and reenact sections 15-04-10, 15-07-04, 15-07-20, 38-09-15, 38-11-04, 44-08-12, and 44-08-13 of the North Dakota Century Code, relating to the requirements governing the leasing and sale of state lands and the use of facsimile signatures on leases issued by the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-04-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-04-10. Leasing to be by auction - Requirements governing. The commissioner of university and school lands, or such other person as may be appointed by the board of university and school lands, shall conduct the leasing of the lands. The leasing must be at public auction, to the highest bidder, and must be held at the courthouse or the place where terms of the district court are held. The auction must commence on the day and time specified in the advertisement for the leasing and must be held between the hours of ten a.m. and five p.m., and must continue from day to day until all tracts or parcels of land advertised for lease have been leased or offered for lease. Auctions for leasing lands may not exceed ten days in any county, except that an adjournment may be made over Sunday or any legal holiday. Notice must be given when the land is offered for lease, that all bids are subject to approval by the board. In counties where a large number of tracts of land are to be leased, the land situated in certain townships may be designated in the advertisement to be leased on certain specified days, and in that case the lands must be leased or offered for lease on the days specified. If all designated lands are not offered for lease because of lack of time, the leasing of the lands unoffered may be adjourned until the following day or days when they must be the first lands offered for lease. Lands that have not been subdivided specially must be offered for lease in tracts of one-quarter section each, except as provided in section 15-08-25. Lands specially subdivided may be offered for lease in the smallest subdivision thereof. At the time of offering the lands for lease, the county auditor of the county shall act as clerk. Within five days after the completion of the auction the county auditor shall certify to the board of university and school lands a list of the lands leased, the price for which each tract was leased, the name of each lessee, and the initial amount of money paid by each lessee for rent.

SECTION 2. AMENDMENT. Section 15-07-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-07-04. Sale requirements. Any land sold under the provisions of this chapter must be by public auction or sealed bids, except purchases under the provisions of section 15-07-10. ~~If the land was acquired through the cancellation of a contract for deed, the price shall be not less than the amount due at the time of cancellation. If the land was acquired through foreclosure, the price shall be not less than the amount due at the time of the foreclosure sale.~~

SECTION 3. AMENDMENT. Section 15-07-20 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-07-20. Leasing of nongrant lands. The board of university and school lands may lease nongrant lands under such reasonable rules and regulations as it may establish. Such rules and regulations may provide for leasing with or without advertisement or competitive bidding. Leases made under the provisions of this section shall be for cash only, and the rental shall be collected in advance except that the board may collect a share of a conservation reserve program payment paid by the federal government. No lease of nongrant lands shall extend for a period of more than ~~three~~ four years, except pasture lands may be leased for a period of five years and any land accepted into the conservation reserve program may have a lease term that coincides with the term of the conservation reserve program contract if so provided in the lease. Leases may be renewed at the discretion of the board. When nongrant lands are leased without advertisement or competitive bidding, the board shall determine the rental by taking into consideration the nature and adaptability of the lands and the improvements thereon.

SECTION 4. AMENDMENT. Section 38-09-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-09-15. Public offering of leases - State. Before leasing any land or interest therein or any mineral rights reserved therein, the state of North Dakota or any of its departments or agencies shall first ~~advertise the lands offered for lease in the official newspaper of the county in which the lands are situated, and in a newspaper of general circulation published in the city of Bismarck~~ give notice in accordance with the rules of the board of university and school lands. ~~The advertisement must be made by publication in the official newspaper of the county once each week for at least two weeks, the last publication to be at least ten days before the day of the leasing.~~ The leasing must be held at the office of the department or agency owning or controlling the lands at the time and place specified in the notice, and the notice ~~as published~~ must contain a statement showing the legal description of the lands to be leased, the time and place where the leasing will be held, the information required by the rules of the board of university and school lands and such other information as may be deemed by the state or department or agency thereof to be applicable. Should publication of any notice of the leasing of mineral rights be inadvertently omitted by any newspaper or should the notice ~~as published~~ contain typographical errors, the state or department or agency may, in its discretion, proceed with the scheduled leasing where it appears that the omission or error is not prejudicial to the state's interest.

SECTION 5. AMENDMENT. Section 38-11-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-11-04. Offering of mineral leases to be public. Prior to the execution of a mineral lease by any agency of the state of North Dakota, that

agency owning or controlling the mineral interest shall first advertise the minerals offered for lease in the official newspaper of the county or counties in which the lands are located; and in a newspaper of general circulation published in the city of Bismarck give notice in accordance with the rules of the board of university and school lands. The advertisement must be published once a week for at least two weeks; the last publication to be at least ten days prior to the day of the leasing. The notice as published must contain a statement showing the legal description of the lands to be leased; the time and place where the leasing will be held; the information required by the rules of the board of university and school lands and such other information as may be deemed by the leasing agency to be applicable. The leasing must be by public auction held at the offices of the agency owning or controlling state-owned minerals time and place specified in the notice.

SECTION 6. AMENDMENT. Section 44-08-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-08-12. Definitions. As used in sections 44-08-12 through 44-08-14:

1. "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money, issued by this state or by any of its departments, agencies, public bodies, or other instrumentalities or by any of its political subdivisions.
2. "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.
3. "Authorized officer" means any official of this state or any of its departments, agencies, public bodies, or other instrumentalities or any of its political subdivisions whose signature to a lease issued by the board of university and school lands, public security or instrument of payment is required or permitted.
4. "Facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

SECTION 7. AMENDMENT. Section 44-08-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-08-13. Facsimile signature. Any authorized officer, after filing with the secretary of state or, in the case of officers of any city, county, school district, or other political subdivision, with the clerk or business manager of such subdivision, the officer's manual signature certified to under oath, may execute or cause to be executed with a facsimile signature in lieu of a manual signature:

1. Any public security, provided that at least one signature required or permitted to be placed thereon, or the signature of an authenticating agent or agents designated in writing by the issuer of the security or by the person whose signature is required or permitted to be placed thereon, shall be manually subscribed, but no such manual subscription shall be required as to interest coupons attached to such security.
2. Any instrument of payment.
3. Any lease issued by the board of university and school lands.

Upon compliance with sections 44-08-12 through 44-08-14 by the authorized officer, a facsimile signature has the same legal effect as a manual signature.

CHAPTER 193

HOUSE BILL NO. 1618
(Representatives R. Berg, Gates)
(Senator Peterson)

HIGHER EDUCATION SEVEN-YEAR PLAN

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code to provide for a seven-year plan for the system of higher education in this state and for procedures for review and implementation of that plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Higher education system review - Special committee - Seven-year plan - Report to legislative assembly.

1. On or before August first of each odd-numbered year, the state board of higher education shall meet with a special committee of the legislative council consisting of the majority and minority leaders and their assistant leaders from the house and senate, the speaker of the house, and the governor, or their designees, to solicit ideas and issues the committee members believe are priority issues regarding the future of the system of higher education in this state.
2. On or before February first of each even-numbered year, the state board of higher education shall present to the committee a seven-year comprehensive plan for the system of higher education in this state. The plan must describe the current and desired condition of the system, in light of the needs of faculty, administrators, and students, and must specifically describe:
 - a. The measures the board plans to take to ensure that the system of higher education meets the postsecondary education and training needs of the citizens and employers of the state.
 - b. The measures the board plans to take to improve the quality of higher education for students.
3. The seven-year plan must contain the rationale of the state board of higher education for the items it has listed in the plan as top priority and the methods the board intends to take to address these top priority issues during the next seven years. The plan must describe what the citizens of the state can expect as a result of the board's actions, the cost or savings of those actions, and specific, detailed options for meeting any costs.
4. The state board of higher education shall report on the seven-year plan, including a report on how the funds proposed in the budget for the upcoming biennium will be used to implement the plan, to the legislative assembly at the organizational session.

Approved April 3, 1989
Filed April 3, 1989

CHAPTER 194

SENATE BILL NO. 2165
(Committee on State and Federal Government)
(At the request of the Board of Higher Education)

ALTERNATE HIGHER EDUCATION RETIREMENT ANNUITIES

AN ACT to amend and reenact subdivision e of subsection 13 of section 15-10-17 of the North Dakota Century Code, and section 2 of chapter 199 of the 1987 Session Laws of North Dakota, relating to annuity purchases in the alternate retirement program by employees of institutions under the control of the state board of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision e of subsection 13 of section 15-10-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- e. Employees of institutions under the control of the state board of higher education who are members of the public employees retirement system, and who become entitled to participate in the alternate retirement program, ~~and who transfer the employee's contribution to that program,~~ are entitled to a ~~transfer of contributions~~ special annuity purchase in the alternate retirement program in accordance with this subdivision. An eligible employee who consents to have that employee's contribution included is entitled to have that employee's contribution and employer's contribution, with interest, in the public employees retirement system fund, ~~transferred~~ used by the retirement board ~~of trustees~~ of the public employees retirement system to purchase for that ~~employee's account~~ employee an annuity in the alternate retirement program in lieu of any other rights under the public employees retirement fund. However, before the employer's contribution may be used for an annuity purchase, the employee's combined years of service with the public employees retirement system and the alternate retirement program must equal or exceed the years of service necessary to be eligible for retirement benefits under the public employees retirement system. An employee who transferred from the public employees retirement system prior to March 30, 1987, and who received a refund of that employee's contribution is entitled to have the employer's contribution, with interest, used to purchase an annuity even if that employee did not purchase an annuity in the alternate employee program with the employee's contribution. If an employee makes the election allowed under this subdivision, that employee relinquishes all rights the employee or any of the employee's beneficiaries may have had to benefits provided under chapter 54-52.

SECTION 2. AMENDMENT. Section 2 of chapter 199 of the 1987 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION 2. ~~LIMITED~~ RETROACTIVE EFFECT OF ACT. This Act is retroactive for employees who became eligible for membership in the alternate retirement program ~~after June 30, 1984, but before the effective date of this Act, and who transferred their employee's contribution to the alternate retirement program before the effective date of this Act~~ prior to March 30, 1987.

Approved March 17, 1989

Filed March 17, 1989

CHAPTER 195

SENATE BILL NO. 2040
(Legislative Council)
(Interim Jobs Development Commission)

HIGHER EDUCATION – PRIVATE ENTERPRISE AGREEMENTS

AN ACT to create and enact a new subsection to section 15-10-17 of the North Dakota Century Code, relating to the powers and duties of the board of higher education with respect to relationships between institutions of higher education and private business and industry.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 15-10-17 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To authorize and encourage institutions of higher education under its control to enter into partnerships, joint ventures, or other contractual arrangements with private business and industry for the purpose of business or industrial development or fostering basic and applied research or technology transfer.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 196

SENATE BILL NO. 2180
(Committee on Appropriations)
(At the request of the Board of Higher Education)

HIGHER EDUCATION INSTITUTION CLAIM PAYMENT

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to payment of claims against institutions of higher education; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Claims against institutions of higher education - Continuing appropriation. Any individual injured by an employee of a public institution of higher education may submit a claim to the president of the institution. As used in this section, "claim" means a monetary demand upon the state for physical injury or property damage arising from activities of an employee of a public institution of higher education. The institution, upon approval of the state board of higher education, may approve and pay a claim for less than one thousand dollars. If the claim is approved, and if there are funds available for payment, the funds are hereby appropriated for that purpose. This section is not a waiver of any sovereign immunity of the state.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 197

SENATE BILL NO. 2354
(Senators Lashkowitz, Satrom, Nelson)
(Representative Ulmer)

ECONOMIC FEASIBILITY INSTITUTE

AN ACT to establish an economic feasibility institute and to specify the purpose, powers, and duties of the institute.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Economic feasibility institute - Establishment - Director.

1. An economic feasibility institute is established to be administered in conjunction with North Dakota state university of agriculture and applied science.
2. The university shall appoint a director of the economic feasibility institute. However, the university shall appoint as the institute's first director the functioning professor in charge of the existing economic feasibility unit within the agricultural economics department of North Dakota state university of agriculture and applied science. The director shall manage the institute, hire and compensate necessary personnel within the limits of legislative appropriations and other funding sources, and prepare a biennial budget. The university shall fix the salary of the director, within the limits of legislative appropriations, and may remove the director for cause.

SECTION 2. Purpose of the institute. The purpose of the economic feasibility institute is to initiate, encourage, and enhance the commercial development of both agricultural and nonagricultural products, processes, commodities, and services in North Dakota through the supervision and performance of economic feasibility research.

SECTION 3. Powers and duties of the institute. The institute shall render services and exercise powers consistent with its purpose which include, but are not limited to:

1. Providing prefeasibility analyses and reports, including:
 - a. Initial consultations;
 - b. The establishment of levels of funding participation, the level of analysis, and the duration of services to be provided under this Act; and
 - c. Information dissemination activities.

2. Conducting short-turnaround economic feasibility studies and business and market plan analyses.
3. Conducting complete feasibility studies directed at analyzing the technical and economic feasibility of approved projects.
4. Developing and maintaining data bases and making projections to aid state and local planning and policy development.
5. Evaluating alternatives for providing and financing public services, including community leadership training.
6. Collaborating for expertise and analysis with other components of North Dakota state university of agriculture and applied science, other universities and colleges, and other public entities and the private sector. The institute may not duplicate services or capabilities available through or provided by other public entities.
7. Contracting for professional and other services necessary to carry out the purpose of this Act.

SECTION 4. Grants and contributions - Continuing appropriation. The economic feasibility institute may contract for, accept, and receive grants, gifts, and contributions of money, property, services, or other things of value from individuals, the federal government, private and public corporations, political subdivisions of the state, and other sources. All revenue received from gifts, grants, and contributions is hereby appropriated for use by the economic feasibility institute in carrying out the provisions of this Act. Any state funding for the institute may be provided through legislative appropriation to the economic development commission for that purpose.

SECTION 5. Access to institute records. Materials and data submitted to, or made or received by, the economic feasibility institute, to the extent that the materials or data consist of trade secrets, or commercial, financial, or proprietary information of individuals and entities contracting with the institute or receiving institute services under this chapter, are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 198

HOUSE BILL NO. 1421
(Representatives Ulmer, R. Anderson)
(Senators Olson, Dotzenrod, O'Connell)

HOME-BASED SCHOOL INSTRUCTION

AN ACT to create and enact four new sections to chapter 15-34.1 of the North Dakota Century Code, relating to home-based instruction, quality assurance, state aid for students in home-based schools, and supervision or administration by state-approved private or parochial schools; to amend and reenact sections 15-19-01, 15-34.1-03, and 15-34.1-04 of the North Dakota Century Code, relating to correspondence study by students receiving home-based instruction, exceptions from the compulsory school attendance laws, and prosecution for violation of compulsory school attendance laws; to repeal section 15-34.1-05 of the North Dakota Century Code, relating to penalties for violating the compulsory school attendance provisions; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-19-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-19-01. High school correspondence courses - Establishment - Enrollment of pupils - Courses of instruction. The state shall provide correspondence courses through the division of independent study under the following provisions:

1. A complete high school curriculum by correspondence which has been specifically determined by the state board of public school education as proper and suitable for instruction under correspondence methods, such determination and approval to be made not less than once in each school year, ~~shall~~ must be maintained upon the campus of one of the state institutions of higher education by the state board of public school education.
2. Unless specifically excused in writing upon the course application forms by the superintendent or an administrator of the school approving the enrollment application, or as provided in subsection 5 of this section all pupils under the age of sixteen taking advantage of the provisions of this chapter ~~shall~~ must be required to attend their local district schools and to study their correspondence lessons under the supervision of a local supervisor. If not required to attend their local schools, their work may be done at such a place as may be designated by the state director in accordance with the rules of the state board of public school education. If in attendance at a local school pupils ~~shall~~ must be supplied with desk space in their respective school without charge, and they shall attend school regularly, and ~~shall~~ be under the same

disciplinary supervision of the teachers as the other school pupils.

3. The high school correspondence work ~~shall~~ must be completed in accordance with the rules ~~and regulations~~ established by the state board of public school education.
4. Correspondence pupils shall pay for books and materials used by them, postage required to mail reports to the division, and ~~such~~ other fees as may be prescribed by the board of public school education.
5. Pupils exempt from the compulsory school attendance laws pursuant to subsection 5 of section 15-34.1-03 may enroll in correspondence courses offered through the division of independent study. These students may study their correspondence lessons in their learning environment under the supervision of a parent. The tests for the correspondence study must be administered by a certified teacher employed either by the public school district in which the parent resides or a state-approved private or parochial school.

SECTION 2. AMENDMENT. Section 15-34.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-34.1-03. Compulsory attendance - Exceptions. The parent, guardian, or other person having control of a child required to attend school by the provisions of this chapter shall be excused by the school board from causing the child to attend school whenever it shall be shown to the satisfaction of the board, subject to appeal as provided by law, that one of the following reasons exists:

1. That the child is in attendance for the same length of time at a parochial or private school approved by the county superintendent of schools and the superintendent of public instruction. No such school shall be approved unless the teachers therein are legally certificated in the state of North Dakota in accordance with section 15-41-25 and chapter 15-36, the subjects offered are in accordance with sections 15-38-07, 15-41-06, and 15-41-24, and such school is in compliance with all municipal and state health, fire, and safety laws.
2. That the child has acquired the branches of learning taught in the public schools and has completed high school.
3. That the child actually is necessary to the support of his family, which shall be a question of fact to be determined by the governing board of the district with the approval of the county superintendent of schools, and such determination shall be subject to review by the superintendent of public instruction on appeal.
4. That the child is in such physical or mental condition as to render attendance or participation in the regular or special education program inexpedient or impracticable. Such condition shall be shown by a declaration of a multidisciplinary team which includes the director of special education of the special education unit of which the school district of residence is a member, the school

superintendent of the child's district of residence, the child's classroom teacher, the child's physician, and the child's parent or guardian.

5. That the child, not including a child with developmental disabilities as defined by subsection 1 of section 25-01.2-01, is receiving home-based instruction in accordance with the provisions of this chapter.

SECTION 3. AMENDMENT. Section 15-34.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-34.1-04. Prosecution for violation of compulsory attendance law - Officers charged with enforcement. Every school board member, school superintendent, principal, truant officer, and teacher in any school system in this state, and every county superintendent of schools shall be charged with the enforcement of the provisions of this chapter relating to compulsory school attendance. Such enforcement shall extend to all children who are offered school facilities by the district, regardless of whether or not they actually reside within the district. Such persons shall inquire into all cases of alleged violation of such provisions and shall obtain from any parent, guardian, or other person having custody of any child of school age not attending school in accordance with the requirements of this chapter the reason, if any, for such absence. In school districts not having a school superintendent, the county superintendent of schools shall be notified of any violation of the compulsory school attendance law, and such county superintendent shall report the fact of the violation to the state's attorney of the county. In school districts which have a school superintendent, the school superintendent or principal shall report to the state's attorney of the county the facts in connection with any violation of the compulsory attendance law. The state's attorney shall prosecute any person who violates the compulsory school attendance provisions of this chapter may petition a court, pursuant to chapter 27-20, for a determination as to whether a child is educationally deprived. The school board of any school district having more than five hundred inhabitants may employ a truant officer to assist in the enforcement of the compulsory school attendance provisions.

SECTION 4. A new section to chapter 15-34.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Home-based instruction. Home-based instruction is an educational program for students based in the child's home and supervised by the child's parent or parents. A parent is qualified to supervise a program of home-based instruction if the parent is certified or certifiable to teach in North Dakota; has a high school education or has received a general educational development certificate and is supervised by a certificated teacher employed either by the public school district in which the parent resides or, if requested by the parent, by a state-approved private or parochial school; or has passed the national teacher exam given in North Dakota, or in any other state if North Dakota does not offer such a test. Home-based instruction must include those subjects required to be taught in accordance with sections 15-38-07, 15-41-06, and 15-41-24 and must be provided for at least four hours per day for a minimum of one hundred seventy-five days per year. Every parent supervising home-based instruction shall maintain an annual record of courses taken by the child and the child's academic progress assessments, including any standardized achievement test results. A parent shall furnish these records to any school to which the

child may transfer upon request of the superintendent or other administrator of that public school district. A parent intending to supervise home-based instruction for the parent's child shall file an annual statement with the superintendent of the public school district in which the child resides. If the school district does not employ a local school superintendent, the statement must be filed with the county superintendent of schools for the county of the child's residence. The statement must be filed at least thirty days prior to the beginning of the school semester for which the parent requests an exemption except when residency of the child is not established by that date. If residency has not been established, the statement must be filed within thirty days of the establishment of residency within the district. The statement must include:

1. The names and addresses of the parent who will supervise and the child who will receive home-based instruction;
2. The date of birth and grade level of each child;
3. The intention of the parent to supervise home-based instruction;
4. The qualifications of the parent who will supervise the home-based instruction;
5. A list of courses or extracurricular activities in which the child intends to participate in the public school district; and
6. An oath or affirmation that the parent will comply with all provisions of this chapter.

SECTION 5. A new section to chapter 15-34.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Students receiving home-based instruction - Quality assurance. In order to meet the state's compelling interest in assuring that citizens of the state receive a quality education, the following minimum indices of quality education are established:

1. A standardized achievement test used by the school district in which the child resides or, if requested by the parent, a standardized achievement test used by a state-approved private or parochial school must be given annually to each child receiving home-based instruction. The test must be given in the child's learning environment and must be administered by a certified teacher employed by the public school district in which the parent resides or, if requested by the parent, employed by a state-approved private or parochial school. The cost of such testing must be borne by the local school district in which the child resides if the test is administered by a certified teacher employed by a public school district or by the parent of the child if the test is administered by a certified teacher employed by a state-approved private or parochial school. Results of such testing must be provided to the local public school superintendent. If the child resides in a school district which does not employ a local school superintendent, the results must be filed with the county superintendent of schools for the county of the child's residence.

2. If the child's basic composite score on a standardized achievement test falls below the thirtieth percentile nationally, the child must be professionally evaluated for a potential learning problem. If the multidisciplinary assessment team evaluation determines that the child is not handicapped according to the eligibility criteria of the department of public instruction and the child does not require specially-designed instruction according to rules adopted by the department of public instruction, the parent providing instruction may continue to provide home-based instruction, upon filing with the superintendent of public instruction a statement, from an appropriately licensed professional, that the child is currently making reasonable academic progress when the learning abilities of the child are taken into consideration. If such statement is not filed, the parent is not entitled to an exemption under subsection 5 of section 15-34.1-03. If the evaluation of the multidisciplinary assessment team determines that the child is handicapped, but not developmentally disabled, according to the eligibility criteria of the department of public instruction, and the student requires specially-designed instruction due to the handicap and that this instruction cannot be provided without special education and related services, the parent providing instruction may continue to provide home-based instruction, upon filing with the superintendent of public instruction an individualized education program plan, formulated within rules adopted by the department of public instruction, indicating that the child's needs for special education are being appropriately addressed by persons qualified to provide special education or related services. If such a plan is not filed, the parent is not entitled to an exemption under subsection 5 of section 15-34.1-03.
3. Any certificated teacher supervising home-based instruction shall spend a minimum average each month of one hour per week in contact with each student under the teacher's supervision who is receiving home-based instruction. The teacher shall evaluate the student's progress and report the student's progress at least twice annually to the local public school superintendent. If the school district does not employ a local school superintendent, the report must be filed with the county superintendent of schools for the county of the child's residence.
4. If the local superintendent of public schools or the county superintendent of schools in those school districts that do not employ a local superintendent determines that the child is not making reasonable academic progress consistent with the child's age or stage of development, the parent of the child must be notified of the conclusion reached and the basis for the conclusion. Upon receipt of that notice, the parent shall make a good faith effort to remedy any deficiency. The appropriate official shall report the failure on the part of a parent to make a good faith effort to the state's attorney pursuant to section 15-34.1-04 as a violation of this chapter. The superintendent of public instruction shall adopt rules to assist local superintendents of schools, county superintendents of schools, and the licensed professionals referred to in subsection 2, in determining whether a child is making reasonable academic progress.

SECTION 6. A new section to chapter 15-34.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

State aid. For purposes of allocating foundation aid and other state assistance to local school districts, students receiving home-based instruction shall be deemed enrolled in the school district in which they reside if the student is supervised by a certificated teacher employed by the public school district in which the parent resides.

SECTION 7. A new section to chapter 15-34.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Supervision or administration by a state-approved private or parochial school. Any certified teacher employed by a state-approved private or parochial school who supervises home-based instruction or who administers a standardized achievement test to children receiving home-based instruction must notify the child's public school district of residence that the teacher is providing such supervision or administration. The parent of any student receiving home-based instruction that is supervised by or taking a test administered by a certified teacher employed by a state-approved private or parochial school is responsible for any costs charged by the state-approved private or parochial school for such supervision or administration.

SECTION 8. REPEAL. Section 15-34.1-05 of the North Dakota Century Code is hereby repealed.

SECTION 9. EXPIRATION DATE. This Act is effective through June 30, 1993, and after that date is ineffective.

Approved April 7, 1989
Filed April 7, 1989

CHAPTER 199

HOUSE BILL NO. 1559
(Hoffner)

DIVISION OF INDEPENDENT STUDY

AN ACT to amend and reenact section 15-19-02, subsection 2 of section 15-19-06, and section 15-19-08 of the North Dakota Century Code, relating to requiring the superintendent of public instruction to appoint the director of the division of independent study and the administrative operational fund; and to repeal subsection 4 of section 15-19-06 of the North Dakota Century Code, relating to the budget of the division of independent study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-19-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-19-02. Administration - Director of division of independent study - Appointment and duties. The program of and all activities related to the division of independent study ~~shall be~~ are the responsibility of and under the supervision of the ~~state board of public school education acting through the~~ superintendent of public instruction. The state director of the division of independent study ~~shall~~ must be appointed by the ~~state board of public school education acting through the office of the~~ superintendent of public instruction. The director, under the supervision of the superintendent of public instruction shall carry out ~~his~~ the director's responsibilities in the administration of the division of independent study in the manner approved by the state board of public school education. The board shall determine the director's qualifications and fix his compensation within limits of legislative appropriations. ~~The director may be discharged at the will of a majority of the state board of public school education.~~ The director ~~shall be~~ is responsible to and ~~must~~ carry out all policies and directives of the state board of public school education in the administration of the program of the division of independent study.

SECTION 2. AMENDMENT. Subsection 2 of section 15-19-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The ~~state board of public school education~~ superintendent of public instruction may, ~~if it deems advisable,~~ establish an administrative operational fund, of not to exceed ten thousand dollars, out of the special operating fund for the division of independent study. The administrative operational fund ~~so established shall~~ must be deposited in the Bank of North Dakota and may be drawn upon by the state director of the division of independent study for the payment of necessary expenses in the administration and operation of the division of independent study within the limits and ~~regulations~~ rules prescribed by the ~~board of public school education~~

superintendent of public instruction. The director shall submit a full, minute, and itemized statement of every expenditure made during the month to the board superintendent of public instruction in accordance with such the rules and regulations as adopted by the board may prescribe superintendent of public instruction, and thereafter the board superintendent of public instruction may, in its discretion, periodically authorize additional transfers to the administrative operational fund, but the balance in such fund shall may never exceed ten thousand dollars, and any unencumbered balance therein at the end of any biennium shall must revert to the state treasury. The administrative operational fund may not be used to pay salaries or expenses of the director. The board superintendent of public instruction shall determine the amount of the bond to be posted by the director.

SECTION 3. AMENDMENT. Section 15-19-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-19-08. High school correspondence work. The amount of money appropriated by the legislative assembly for correspondence work for a biennium, or so much thereof as may be necessary, shall be expended first **by the state board of public school education** for high school work by correspondence.

SECTION 4. REPEAL. Subsection 4 of section 15-19-06 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 200

SENATE BILL NO. 2195

(Committee on Education)

(At the request of the Superintendent of Public Instruction)

DEPARTMENT OF PUBLIC INSTRUCTION

AN ACT to create and enact a new section to chapter 15-21 of the North Dakota Century Code, relating to the superintendent of public instruction; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Establish office of department of public instruction. The office of the superintendent of public instruction, a nonprofit education agency, shall be known as the department of public instruction. The chief administrative officer is the superintendent of public instruction as provided by section 13 of article V of the Constitution of North Dakota.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 14, 1989

Filed March 15, 1989

CHAPTER 201

SENATE BILL NO. 2280
(Senator Nalewaja)
(Representative Hoffner)

GED TEST RESULT CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 15-21 of the North Dakota Century Code, relating to the confidentiality of the results of general educational development tests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

General educational development test results - Confidentiality. The results of general educational development tests maintained by the superintendent of public instruction are confidential and are not open for public inspection. This section does not prohibit the superintendent of public instruction from making an individual's test results available at the request of the individual.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 202

HOUSE BILL NO. 1504
(Representatives Rydell, Schindler, Hoffner)
(Senators Heinrich, O'Connell)

CAREER GUIDANCE PROGRAMS

AN ACT to provide for the development of career guidance and development programs for children and adults.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Career guidance and development programs" means those programs which provide a comprehensive competency-based curriculum that identifies specific client outcomes, personnel competencies, and institutional capabilities; which pertain to the subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decisionmaking, placement skills, and knowledge and understanding of local, state, and national occupational, educational, and labor market needs, trends, and opportunities; and which assist individuals in making and implementing informed educational and occupational choices.
2. "Local educational agency" means any public elementary, secondary, or postsecondary agency in the state.
3. "Superintendent" means the superintendent of public instruction.

SECTION 2. Statement of purpose. The purpose of this Act is to provide support to local communities, through local educational agencies, for implementation of career guidance and development programs to prepare children and adults to make career choices based on and resulting from knowledge of the world of work, occupational, and labor market information, career exploration, self-assessment, and decisionmaking techniques.

SECTION 3. Guidelines for implementing career guidance and development programs. The superintendent may adopt rules under chapter 28-32 for the implementation of career guidance and development programs by local educational agencies. In adopting the rules, the superintendent shall review and consider guidelines formulated by the North Dakota occupational information coordinating committee established pursuant to the Carl D. Perkins Vocational Education Act [Pub. L. 98-524; 98 Stat. 2435; 20 U.S.C. 2301 et seq.]. The rules adopted by the superintendent shall require the:

1. Involvement of the community through an advisory committee.

2. Assessment of the extent to which existing career guidance and development programs and services available in the community meet current anticipated needs.
3. Coordination of career guidance and development programs, services, and related activities provided by local educational institutions with local-level and state-level public and nonpublic agencies and organizations.
4. Evaluation of career guidance and development programs.
5. Formulation of monetary budgets for support of career guidance and development programs.

SECTION 4. Program coordinator and support staff. The superintendent may employ one full-time professional staff person for the purpose of coordinating the career guidance and development programs implemented pursuant to this Act. The superintendent may employ support staff as may be required to assist the program coordinator. The superintendent may:

1. Review and revise periodically the rules adopted pursuant to section 3 of this Act.
2. Provide technical assistance to local educational agencies in preparing program proposals, and implementing career guidance and development programs.
3. Collect and evaluate information to determine the effectiveness of career guidance and development programs.
4. Provide periodic written evaluations of career guidance and development programs.
5. Serve as a resource specialist to local educational agencies in the area of career guidance and development policies and instruction.
6. Identify career guidance and development programs implemented by local educational agencies which may serve as model programs.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 203

HOUSE BILL NO. 1604
(Representatives Kelly, L. Hanson, Rydell)
(Senators Mathern, Krebsbach)

COMPREHENSIVE HEALTH EDUCATION PROGRAMS

AN ACT to provide for a program of comprehensive health education to promote public health and public health awareness in the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Advisory committee" means the health education advisory committee.
2. "Comprehensive health education program" means a sequential course of instruction:
 - a. Provided in each school year in grades kindergarten through twelve and designed to aid and influence the making of decisions concerning personal, family, and community health;
 - b. That includes:
 - (1) Mental and emotional health.
 - (2) Personal health and hygiene.
 - (3) Prevention and control of sexually transmitted diseases and other communicable diseases, with emphasis on abstinence.
 - (4) Dental health.
 - (5) Nutrition.
 - (6) Chemical health, including alcohol, other drugs, and tobacco.
 - (7) Consumer health.
 - (8) Emergency care.
 - (9) Environmental and community health.
 - (10) Family health education.
 - c. That supplements, and is not a substitute for, physical education requirements.

3. "Local school district" means the entity that is responsible for administration of and has authority to establish policy for a school or a number of schools within its jurisdiction.
4. "Superintendent" means the superintendent of public instruction.

SECTION 2. Health education advisory committee - Membership - Duties.

1. The governor shall appoint the advisory committee as follows:
 - a. One physician from a list of three names submitted by the North Dakota medical association;
 - b. Three educators, one from each level of kindergarten through grade six, grades seven through nine, and grades ten through twelve, from a list of six names submitted by the North Dakota education association;
 - c. One citizen who is not a health care provider or educator;
 - d. One member of a local school board in the state from a list of three names submitted by the North Dakota school boards association;
 - e. One public health nurse from a list of three names submitted by the North Dakota nurses association;
 - f. One school administrator from a list of three submitted by the North Dakota council of school administrators;
 - g. One member from the state department of health and consolidated laboratories, who serves without a vote; and
 - h. One member from the state department of public instruction, who serves without a vote.
2. Members of the advisory committee must be appointed for a term of three years, except that in the case of initial appointments to the advisory committee the physician member, one educator, and the citizen must be appointed for a term of one year, and one educator, the local school board member, and the nurse member must be appointed for a term of two years. Thereafter, each succeeding term must be for a period of three years. Members may be reappointed for a maximum of nine years of service. Vacancies must be filled in the same manner as original appointments for the balance of the unexpired term.
3. The advisory committee shall advise and assist the superintendent in the implementation and administration of this Act by:
 - a. Recommending guidelines for the preparation of comprehensive health education programs;
 - b. Providing assistance upon request to local school districts in the preparation and implementation of comprehensive health education programs;

- c. Providing assistance to the superintendent in administering this Act; and
 - d. Providing advice and any other assistance as requested by the superintendent for purposes of this Act.
4. Members of the advisory committee shall serve without compensation. The superintendent, however, shall reimburse members of the advisory committee for travel and other expenses incurred in the performance of their duties as members of the advisory committee.

SECTION 3. Comprehensive health education programs.

1. Each local school district shall formulate and implement a comprehensive health education program developed pursuant to guidelines adopted by the superintendent. In the formulation and implementation of the program, the local public school district, through meetings open to the general public, shall seek input and participation in the development and implementation of the program from local health officials, health care providers, parents, educators, and other members of the community.
2. Upon request, the superintendent shall provide technical assistance to local school districts in the formulation and implementation of comprehensive health education programs.
3. Two or more local school districts may implement a cooperative comprehensive health education program.

SECTION 4. Program guidelines. Within one hundred eighty days after the effective date of this Act, the advisory committee shall recommend guidelines for the preparation of comprehensive health education programs. Within one year after the effective date of this Act, the superintendent shall adopt rules for this Act. The superintendent and advisory committee shall, through meetings open to the general public, seek input and participation in the preparation of the guidelines from health officials, health care providers, parents, educators, and other members of the general public. Rules must include:

1. Minimum amounts of instruction time for comprehensive health education at each level of elementary and secondary education.
2. Suggested curricula at the various levels of education.
3. Minimum qualification requirements for teachers participating in the program.

SECTION 5. Staff. The superintendent may employ a full-time employee solely for the purpose of assisting the superintendent and advisory committee in the implementation of this Act.

SECTION 6. Review of programs. Each local school district shall submit to the superintendent a proposed comprehensive health education program for review. The superintendent shall review each proposed program submitted and may make specific recommendations to the local school district to improve the program. Upon review by the superintendent and consideration by the local school board of any recommendations made by the superintendent,

the superintendent shall authorize distribution of funds to the local school district.

SECTION 7. Exemption from program participation. A public school principal, upon receipt of a statement signed by a student's parent or guardian stating that participation by the student in the comprehensive health education program conflicts with the student's religious beliefs, shall exempt that student from any part of the program in which the conflict occurs. A student may not be penalized in any manner as a result of the exemption.

SECTION 8. Limitations. This Act does not authorize, accommodate, facilitate, or promote linked or school-based sex clinics.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 204

HOUSE BILL NO. 1304
(Representatives Tollefson, J. DeMers, Myrdal)
(Senators Holmberg, Schoenwald, Dotzenrod)

MILITARY INSTALLATION SCHOOL DISTRICTS

AN ACT to create and enact a new chapter to title 15 of the North Dakota Century Code, relating to establishing school districts on military installations; to amend and reenact sections 15-27.1-02 and 15-27.1-11 of the North Dakota Century Code, relating to the application of the laws relating to annexation, reorganization, and dissolution of school districts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-27.1-02. Reorganization not to include annexation or dissolution - Boundary changes application of chapters 15-27.1 through 15-27.4. Chapter 15-27.3 does not apply to chapter 15-27.2 or to chapter 15-27.4 except where specifically referenced in chapters 15-27.2 and 15-27.4. Chapters 15-27.2 and 15-27.4 are separate and additional methods for changing school district boundaries. ~~The~~ Except as provided in section 3 of this Act, the boundaries of school districts may be changed or altered only by annexation, reorganization, or dissolution as provided for in chapters 15-27.2, 15-27.3, and 15-27.4. This chapter and chapters 15-27.2, 15-27.3, and 15-27.4 apply to all school districts in the state, except school districts established pursuant to section 3 of this Act, including the board of education of the city of Fargo and the district under its jurisdiction for school purposes.

SECTION 2. AMENDMENT. Section 15-27.1-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-27.1-11. Reorganization, annexation, or dissolution of school district not operating a school - Transportation. Any school district in this state which is not operating either an approved elementary or high school within its boundaries on July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, and any school district that may cease to operate either an approved elementary or high school within its boundaries after July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall become, through the process of reorganization, annexation, or dissolution as provided by law, a part of a school district operating an approved elementary or high school. Any school district not operating either an approved elementary or high school within its boundaries on July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall complete reorganization with or annexation to an operating school district by July 1,

1989. Any school district that ceases to operate either an approved elementary or high school within its boundaries after July 1, 1987, unless it begins operating an approved elementary or high school prior to July 1, 1989, shall complete reorganization or annexation within two years from the date the school district ceased to operate either an approved elementary or high school. Any student who resides within a school district which is annexed to or reorganized with another district or districts pursuant to sections 15-27.1-11 and 15-27.4-01, and which has been sending students to a school district in a bordering state, county, or district, because of proximity or terrain, shall be permitted to attend or continue to attend school in the district in the bordering state, county, or district. The students in any district that is attached by annexation, reorganization, or dissolution pursuant to sections 15-27.1-11 and 15-27.4-01 must be provided transportation in the same manner transportation is provided to students in the school district the nonoperating district is attached to.

The county committee of the county encompassing the major portion of any school district affected by sections 15-27.1-11 and 15-27.4-01 which does not reorganize or annex itself to an operating school district within the time limit prescribed in sections 15-27.1-11 and 15-27.4-01 shall dissolve and attach the nonoperating school district to an operating school district in accordance with chapter 15-27.4. This section does not apply to school districts established pursuant to section 3 of this Act.

SECTION 3. A new chapter to title 15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Military installation - School district formation. The state board of public school education may, at the request of the base commander of a military installation, form the boundaries of a school district on that military installation. The school district boundaries must be coterminous with all lands over which the military installation exercises exclusive concurrent or proprietary jurisdiction. Prior to forming such a school district, the state board shall hold a public hearing. The state board shall publish notice of the public hearing in the official newspaper in the county or counties in which the proposed school district is to be located at least fourteen days prior to the date of the hearing.

School board members - Terms of office - Qualifications - Vacancies. The school board of a school district formed pursuant to this Act consists of five members. The superintendent of public instruction shall adopt rules under chapter 28-32 providing appointment procedures. The superintendent, after consultation with the base commander, and with the approval of the state board of public school education, shall appoint the board members in April of each year, except that the initial appointments shall be made within fifteen days after the effective date of this Act. The board members must reside on the military installation. The school board members shall serve three-year terms except that the superintendent of public instruction shall designate two of the members initially appointed to serve two-year terms and two of the members initially appointed to serve one-year terms. If a vacancy occurs, the superintendent of public instruction, after consultation with the base commander, and with the approval of the state board of public school education, shall appoint a member to serve for the remainder of the term.

Organization of school board - Meetings - Appointment of business manager. A majority of the board is a quorum and the agreement of a majority of the members present is necessary for the transaction of any business. The

annual meeting of the school board must be held during the month of July following the appointment to the board, on a date called by the president and convenient to the rest of the members. At the annual meeting in July, the board members shall elect one member to serve as president for a one-year term. Notice of any regular or special meeting must be given in writing to each member of the board; provided that the attendance at any meeting, without objection, by any board member constitutes a waiver of the notice required to be given to the member. The board must hold regular meetings for transacting business. Special meetings may be called by the president or by any two members of the board. The board shall appoint a business manager who is not a member of the board who shall hold office at the will of the board and receive compensation as fixed by the board.

School board - Duties. Any school board established pursuant to this Act shall, in the conduct of its business:

1. Place primary importance on the education and social well-being of the children residing in the school district.
2. Give due respect to the wishes of the parents of each child residing in the school district with regard to the provision of education to those children.
3. Enter into written contracts or agreements to provide for the education of the children residing in the school district.
4. Conduct all board meetings as provided in section 44-04-19.

Application of chapter 15-29 to school districts established under this chapter. The presidents of school boards established under this chapter shall have the duties provided in section 15-29-04. The school boards of school districts established under this chapter shall have the powers and duties provided in section 15-29-08 if applicable or unless pre-established agreements prevail. The business manager of school districts established under this chapter shall have the duties provided in section 15-29-09. School board members are entitled to compensation and expenses in the amounts provided in section 15-29-05. Sections 15-29-07, 15-29-10, 15-29-11, 15-29-13, and 15-29-14 apply to school districts established under this chapter.

School district agreements.

1. This Act does not affect any agreement entered into prior to the effective date of this Act between the Emerado elementary public school district and the Grand Forks public school district. Any agreement entered into between those school districts shall continue under the terms provided in the agreement or for as long as both school districts continue to operate and the Grand Forks air force base contracts for full educational services from the Grand Forks public school district.
2. Before the state board of public school education requests that a school district be established pursuant to this Act on the Minot air force base, the Glenburn public school district and the Minot public school district must enter into an agreement regarding the provision of education to the students residing on the air force base. The agreement must be approved by the state board of public

school education. The Minot public school district and the Glenburn public school district, in entering into an agreement, must take into consideration current and potential revenues, including current and potential revenues from property taxes, in lieu of property taxes, and federal and state funds that are distributed to school districts based on census, and losses that may occur as a result of the agreement. The state board of public school education must receive approval from the United States secretary of education prior to the formation of the proposed school district.

3. Before the state board of public school education requests that a school district be established on a military installation other than the Grand Forks air force base and the Minot air force base, pursuant to this Act:
 - a. The school districts providing education to students residing on a military installation must enter into an agreement regarding the provision of education to those students. The agreement must be approved by the state board of public school education. School districts entering into the agreement must take into consideration current and potential revenues and losses that may occur as the result of the agreement; and
 - b. The state board of public school education must receive approval from the United States secretary of education regarding the formation of the proposed school district.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 205

SENATE BILL NO. 2208

(Committee on Education)

(At the request of the Superintendent of Public Instruction)

COUNTY REORGANIZATION COMMITTEE COMPENSATION

AN ACT to amend and reenact subsection 1 of section 15-27.1-03 of the North Dakota Century Code, relating to the compensation of county reorganization committee members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 15-27.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Each county in this state shall have a county committee formed by the selection of one resident from each of the county commissioner districts within the county. Each member is entitled to receive the actual and necessary expenses incurred in the performance of official duties in the amounts provided by law for state officers and employees. Each member is entitled to receive ~~ten~~ twenty-five dollars as compensation for each meeting of the committee actually attended by the member. The office of management and budget shall pay by warrant the compensation and expenses as directed by the superintendent of public instruction from moneys appropriated for that purpose.

Approved March 28, 1989

Filed March 28, 1989

CHAPTER 206

HOUSE BILL NO. 1470
(Stofferahn, Aarsvold)

SCHOOL DISTRICT PROPERTY EXCHANGES

AN ACT to amend and reenact section 15-27.2-02 of the North Dakota Century Code, relating to exchanges of school district property by school boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.2-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-27.2-02. Restricted changes in boundaries - Petition - Requirements. A resident or residents of a school district may request annexation of the property upon which his or their residence is situated to an adjacent school district by a petition for an exchange of property between the district of residence and the adjacent district under the following conditions:

1. The signer of the petition must reside upon the property which is requested to be annexed to the adjacent district.
2. There is an agreement for the exchange of property between the petitioners and the owner of the property in the adjacent district which property is to be exchanged for the property of the petitioner and the owner of the property in the adjoining district need not reside on the property exchanged in order to enter into the agreement.
3. The school boards of the districts involved approve the exchange of property.
4. The difference in taxable valuation of the property involved in the exchange does not exceed one thousand dollars.

Except as provided in this section, the proceedings in this section are subject to the other provisions of this chapter applicable to annexation proceedings generally. Approval of the annexation petition by the county committee and the state board must contain a finding that the requirements in this section have been met. Any school board aggrieved by the decision of another school board not to approve the exchange of property may appeal the decision to the county committee and, if aggrieved by the decision of the county committee, may appeal the decision of the county committee to the state board.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 207

SENATE BILL NO. 2266
(Senators Yockim, Hanson)
(Representatives Nelson, Gerhardt)

SCHOOL DISTRICT ANNEXATION DATE

AN ACT to amend and reenact section 15-27.2-05 of the North Dakota Century Code, relating to the effective date of annexations of school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-27.2-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-27.2-05. Effective date of attachment or detachment - Equalization - Voting places. If territory is annexed to a school district or detached from it, under this chapter, the change in boundaries becomes effective the next July first after the final approval by the state board ~~unless another effective date is provided for by the county committee or in the petition~~, and all the assets and liabilities of the district involved shall be equalized at the time the annexation petition is approved by the county reorganization committee. If territory is attached to an existing school district, the electors in the attached territory shall vote on school matters at the nearest polling place in the district to which it is attached. Prior to the completion of the annexation of any school district under this chapter, the existing school board of any school district may not contract or place the district under any obligation, except upon the recommendation of the county committee.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 208

SENATE BILL NO. 2311
(Holmberg)

CITY AND SCHOOLS COMBINED ELECTIONS

AN ACT to amend and reenact subsection 2 of section 15-28-03 of the North Dakota Century Code, relating to combined city and school district elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 15-28-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The annual election provided for in this section may, upon resolution of the school board, be held in conjunction with the regularly scheduled city election, established by state law or established pursuant to the home rule powers of the city, held in a city located wholly or partially within that school district. The school board may enter into an agreement with the city commission or the city council concerning the sharing of election personnel, the printing of election materials, the use of one set of pollbooks, and the apportioning of election expenses. If only one set of pollbooks is used, the pollbook must contain a reference indicating the voter's eligibility to vote in the city or school board election, or both. References in this chapter to the date of school board elections, insofar as they relate to a school board which holds its elections in conjunction with a city, are deemed to mean or to refer to the date of the applicable city election. Such a school board has the further option to convert the terms of office of its members to four years rather than three years in order that school board elections like city elections may be held biennially rather than annually. A school board may convert the future terms of its members to four years by passing a resolution requiring such a conversion. Thereafter, following the expiration of the three-year term of each incumbent in office as of the date of the passage of the resolution, the term of office for that position on the board shall be four years, except that as to any seat where such an extension of the term would result in the four-year term of office ending in an odd-numbered year, for which seat one additional and transitional term of three years shall be provided before the term becomes a four-year term of office. Once the school board has accomplished the transition to biennial elections, references in this ~~chapter~~ title to annual elections as they apply to the school board are deemed to mean biennial elections, and the election held pursuant to section 15-28-11 must be held in even-numbered years.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 209

HOUSE BILL NO. 1477
(Myrdal, Wilkie, Brokaw)

SCHOOL DISTRICT NEWSPAPERS

AN ACT to create and enact a new subsection to section 15-29-08 of the North Dakota Century Code, relating to the powers of a school board to designate an official school district newspaper; to amend and reenact sections 15-28-06, 15-28-11, subsection 17 of section 15-29-08, sections 15-34.2-07, 15-34.2-07.1, 15-47-15, and subsection 7 of section 21-03-07 of the North Dakota Century Code, relating to official newspapers of school districts; and to repeal section 15-22-23 of the North Dakota Century Code, relating to publication of notice of school elections by county superintendents of schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-28-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-28-06. Annual and special elections - Notice. Notice of the annual school district election ~~shall be given by the county superintendent of schools in accordance with the provisions of section 15-22-23. Notice and notice~~ of special school elections shall be given by the school board. At least fourteen days before the date the ~~special~~ election is to be held the school board shall cause to be published, in the official newspaper of the ~~county school district~~, notice of the ~~special~~ election. ~~If no newspaper is published in the county, the notice shall be published in a newspaper in an adjoining county in the state.~~ Such notice shall be signed by the ~~clerk~~ business manager of the school district, or in ~~his~~ the business manager's absence by the president of the school board, and shall state the time and place of holding the election, and the matter to be voted upon.

SECTION 2. AMENDMENT. Section 15-28-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-28-11. Publication of school board proceedings - Electorate to decide biennially. Biennially, ~~commencing in the year 1967~~ at the annual election of school board members held in each school district, the question of whether a record of the proceedings of the school board shall be published in ~~a the official newspaper of general circulation in such the school district~~ shall be submitted to the electors of ~~such the~~ district. If the publication of such proceedings is approved by a majority of the electors voting thereon, the records of ~~such the~~ school board, including an itemized list of obligations approved for payment, shall be published in ~~a the official newspaper of general circulation in such the school district.~~ When applicable, these proceedings shall be identified in the newspaper as being published subject to review and revision by the school board. These proceedings shall be given to the newspaper by the ~~board's clerk~~ school district's business manager within a reasonable time after each school board

meeting for the succeeding two years, or until disapproved at a succeeding school board election.

SECTION 3. AMENDMENT. Subsection 17 of section 15-29-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

17. To make a report on July first of each year, or as soon thereafter as practicable, of the progress and financial and educational condition of all the schools under its charge. A copy of such report, together with such further information as shall be required by the superintendent of public instruction, shall be forwarded to the county superintendent of schools. The report of financial condition and such other portions as the school board shall consider advantageous to the public, shall be published in a the official newspaper published in of the school district or, if there is none, then in the official county newspaper.

SECTION 4. A new subsection to section 15-29-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

To designate, at the annual meeting, a newspaper of general circulation in the school district as the official newspaper of the school district.

SECTION 5. AMENDMENT. Section 15-34.2-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-34.2-07. Vehicular transportation - Bids, contracts, bonds. The school board of any school district which furnishes vehicular transportation to any of its schools, prior to the opening of school each year, shall enter into written contracts for the furnishing of such transportation for the ensuing school year. If the vehicle furnished is privately owned, the owner or lessee of the vehicle and the school board may enter into a contract, which shall not exceed seven years' time. Except as otherwise provided in section 15-34.2-07.1, the board shall give at least ten days' notice of the time and place of the letting of such contracts and shall call for sealed bids therefor by publication in a the official newspaper of general circulation within such the school district. The notices shall describe the route to be covered by each contract and shall state that the board reserves the right to reject any and all bids, that a bond submitted in a separate envelope will be required of each successful bidder in the sum of five hundred dollars or such greater sum as may be set by the board, conditioned for the faithful performance of the duties prescribed by the contract, and that the bids submitted must name the person or persons who will operate the vehicle and describe the nature of the vehicle.

* SECTION 6. AMENDMENT. Section 15-34.2-07.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-34.2-07.1. School transportation and fuel contracts - Direct negotiation. Notwithstanding sections 15-34.2-07 and 15-34.2-08, a contract for the transportation of schoolchildren, or a contract for the purchase of fuel for vehicles which was originally bid by and let to a contractor may be renewed by direct negotiation with that contractor provided that two or more

* NOTE: Section 15-34.2-07.1 was also amended by section 1 of Senate Bill No. 2275, chapter 214.

written quotations are obtained for the service or fuel when possible, or upon sealed bids. At least thirty days before awarding a directly negotiated contract, the school district shall, by published notice, request quotations for the service or fuel to be provided. All quotations obtained must be kept on file for a period of at least one year after their receipt. If a contract is made by direct negotiation, all quotations must be maintained as public information. If a contract is made upon sealed bids, the procedure for advertising and awarding bids must conform to the provisions of section 15-34.2-07 except as otherwise provided in this section. A directly negotiated contract may only be entered into at a public meeting of the school district board during which meeting the patrons of the school district are given an opportunity to appear and comment. Notice of the school board meeting must be published at least one week prior to the meeting in a legal the official newspaper of wide circulation within the school district.

SECTION 7. AMENDMENT. Section 15-47-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-15. School contracts - Advertisement for bids - Publication - Exceptions - Penalty. No contract involving the expenditure of an aggregate amount greater than eight thousand dollars, except as hereinafter set forth, shall be entered into by any school district of any kind or class except upon sealed proposals and to the lowest responsible bidder after ten days' notice by at least one publication in a legal the official newspaper published in the county in which of the school district, or a portion thereof, is located. ~~If no newspaper is published in such county, the publication shall be made in a newspaper published in an adjacent county.~~ The provisions of this section shall not apply to any of the following classes of contracts:

1. For personal services of employees of the district.
2. For school text or reference books.
3. For any article which is not for sale on the open market.
4. For any patented, copyrighted, or exclusively sold device or feature required to match articles already in use.
5. For any patented, copyrighted, or exclusively sold article of so distinctive a nature that only one make of the article can be purchased.
6. Any building contract.
7. For school transportation services or fuel for vehicles the purchase of which is made by direct negotiation with a contractor in accordance with section 15-34.2-07.1.
8. For heating fuel which is purchased under a directly negotiated contract provided the procedure described in section 15-34.2-07.1 for transportation and vehicle fuel is followed.

Such exceptions shall be strictly construed. Every member of a school board who participates in a violation of this section shall be guilty of a class B misdemeanor.

* SECTION 8. AMENDMENT. Subsection 7 of section 21-03-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. The governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings; provided, that the initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper of the school district, and any owner of taxable property within the school district may within sixty days after publication file with the business manager of the school district a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the school district, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

SECTION 9. REPEAL. Section 15-22-23 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 21, 1989
Filed March 23, 1989

- * NOTE: Subsection 7 of section 21-03-07 was also amended by section 1 of House Bill No. 1457, chapter 290.

CHAPTER 210

SENATE BILL NO. 2330
(Senators Holmberg, Krebsbach, Maxson)
(Representatives Gates, Wentz, Jensen)

SCHOOL BOARD CANDIDATE FILING DEADLINE

AN ACT to amend and reenact subsection 1 of section 15-28-09 of the North Dakota Century Code, relating to the election of members of a school board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 15-28-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as otherwise provided in subsection 2, any candidate for election as a member of the school board of a school district shall file with the business manager of the school district, not less than ~~twenty five~~ thirty-three days before the election and before four p.m. on the ~~twenty fifth~~ thirty-third day, a statement setting forth the candidate's name and the position for which that person is a candidate. A statement which is mailed to the business manager ~~shall~~ must be in the business manager's physical possession before four p.m. on the ~~twenty fifth~~ thirty-third day before the election. At least twenty days before the election, the business manager shall prepare and cause to be printed, or otherwise uniformly reproduced, an official ballot containing the names of all persons who have filed as herein provided. The arrangement of the names of the candidates upon the ballot ~~shall~~ must be determined by lot by such business manager in the presence of the candidates or their representatives. The ballot ~~shall~~ must be headed "official ballot", ~~shall~~ must be nonpartisan in form, and ~~shall~~ must contain the following:
 - a. The name of the district.
 - b. The date of the election.
 - c. The number of persons to be elected to each office.
 - d. Blank spaces below the names listed as candidates for each office in which names not stated on the ballot may be written.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 211

SENATE BILL NO. 2213
(Committee on Education)
(At the request of the Superintendent of Public Instruction)

SCHOOL DISTRICT BUDGET AND LEVY CHANGES

AN ACT to amend and reenact subsection 15 of section 15-29-08 and section 57-15-13 of the North Dakota Century Code, relating to the certification of school district budgets and tax levies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 15 of section 15-29-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15. To levy a tax upon the property in the district for school purposes, and to amend and certify budgets and tax levies as provided in title 57.

SECTION 2. AMENDMENT. Section 57-15-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-13. School district tax levies. School district taxes shall be levied by the governing body of each school district on or before the last day of July of each year. The governing body of the school district may amend its tax levy and budget for the current fiscal year on or before the tenth day of October of each year but the certification must be filed with the county auditor within the time limitations under section 57-15-31.1. Taxes for school district purposes shall be based upon an itemized budget statement which shall show the complete expenditure program of the district for the current fiscal year and the sources of the revenue from which it is to be financed. The school board of each public school district, in levying taxes, shall be limited by the amount necessary to be raised for the purpose of meeting the appropriations included in the school budget of the current fiscal year, and the sum necessary to be provided as an interim fund, together with a tax sufficient in amount to pay the interest on the bonded debt of the district and to provide a sinking fund to pay and discharge the principal thereof at maturity.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 212

SENATE BILL NO. 2038
(Legislative Council)
(Interim Education Finance Committee)

HANDICAPPED STUDENT SCHOOL ATTENDANCE

AN ACT to amend and reenact subsection 4 of section 15-34.1-03 and subsection 3 of section 15-59-01 of the North Dakota Century Code, relating to an exception from compulsory school attendance for handicapped students.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 15-34.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. That the child ~~is in such physical or mental condition as to render~~ has been identified as handicapped pursuant to the procedure used by the superintendent of public instruction to identify a student as handicapped under subsection 3 of section 15-59-01 and that the handicap renders attendance or participation in the regular or special education program inexpedient or impracticable. ~~Such condition shall~~ The determination that the handicap renders attendance or participation inexpedient or impracticable must be shown by a declaration of a multidisciplinary team which includes the director of special education of the special education unit of which the school district of residence is a member, the school superintendent of the child's district of residence, the child's classroom teacher, the child's physician, and the child's parent or guardian.

SECTION 2. AMENDMENT. Subsection 3 of section 15-59-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Handicapped child" means a child who is mentally retarded, hard of hearing, deaf, deaf-blind, speech or language impaired, visually handicapped, seriously emotionally disturbed, specific learning disabled, orthopedically impaired, or otherwise health impaired who by reason thereof requires special education and related services or who has been excused from attending or participating in special education pursuant to subsection 4 of section 15-34.1-03.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 213

HOUSE BILL NO. 1637
(Gates, Kloubec)

FOUNDATION AID PROGRAM

AN ACT to amend and reenact section 15-34.2-03, subsections 2 and 3 of section 15-40.1-06, sections 15-40.1-07, 15-40.1-08, 15-40.1-16, and subsection 1 of section 15-40.2-03 of the North Dakota Century Code, relating to the foundation aid weighting factors, the per-pupil payment, the equalization factor, and transportation aid to schools; to provide for transition; and to provide for contingent additional per-pupil foundation aid payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-34.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-34.2-03. Transportation - Payment optional with school board - Schedule. The school board of any school district in the state may pay, ~~in its discretion,~~ to each family living more than two miles [3.22 kilometers] from a school in the district which is taught the required length of time, a sum per day for each day's attendance of a student or students of such family, when transported by a member of the family or by a conveyance furnished or paid for by the family, or when the family has paid for lodging for the child, according to the distance between the home of the family and the school, at the rate of ~~ten~~ twenty cents per day for each one-half mile [.80 kilometer] over two miles [3.22 kilometers]. Such distance shall be measured by the route from the front door of the nearest operating school to the front door of the family's residence according to the most convenient public course of travel. Payments for transportation shall not be limited to the amount set forth in this section where the student or students are required to be transported to another school because the school which they had been attending is closed.

* SECTION 2. AMENDMENT. Subsections 2 and 3 of section 15-40.1-06 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. a. The educational support per pupil during the first year of the ~~1987-89~~ 1989-91 biennium shall be one thousand ~~four~~ five hundred ~~twenty-five~~ dollars and for the second year of the biennium the educational support per pupil shall be one thousand ~~four~~ five hundred ~~twelve~~ forty-five dollars and shall be the basis for calculating grants-in-aid on a per-pupil basis as provided in sections 15-40.1-07 and 15-40.1-08.
- b. School districts operating high schools not meeting the minimum curriculum as provided in section 15-41-24 or the teacher qualifications in section 15-41-25 shall be supported in the

* NOTE: Subsection 2 of section 15-40.1-06 was also amended by section 1 of House Bill No. 1472, chapter 230, and subsection 3 of section 15-40.1-06 was also amended by section 1 of House Bill No. 1614, chapter 231.

amount of two hundred twenty dollars, which shall be the basis for calculating grants-in-aid on a per-pupil basis as provided in section 15-40.1-07.

3. In determining the amount of payment due school districts for per-pupil aid under this section, the product of ~~twenty~~ twenty-one mills for the 1989-90 school year and ~~twenty-two~~ twenty-one mills for each year thereafter times the latest available net assessed and equalized valuation of property of the school district ~~shall~~ must be subtracted from the amount of such aid.

* SECTION 3. AMENDMENT. Section 15-40.1-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-07. High school per-pupil payments - Amount - Proportionate payments. ~~There~~ Payments must be paid made each year from state funds to ~~all~~ each school districts of the county district operating a high ~~schools~~ school and to each school districts district contracting to educate high school pupils in a federal school, subject to adjustment as provided in section 15-40.1-09, ~~payments~~ as follows:

1. For each high ~~schools~~ school district having under seventy-five pupils in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor ~~1.70~~ 1.635 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.625 times the number of high school pupils in grades nine through twelve registered in that school district, times the educational support per pupil as provided in section 15-40.1-06 ~~for each high school pupil registered in the schools each year.~~
2. For each high ~~schools~~ school district having seventy-five or more, but less than one hundred fifty pupils in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor ~~1.40~~ 1.35 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.335 times the number of high school pupils in grades nine through twelve registered in that school district times the educational support per pupil as provided in section 15-40.1-06 ~~for each high school pupil registered in the schools each year.~~
3. For each high ~~schools~~ school district having one hundred fifty or more, but less than five hundred fifty pupils in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor ~~1.32~~ 1.28 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.24 times the number of high school pupils in grades nine through twelve registered in that school district times the educational support per pupil as provided in section 15-40.1-06 ~~for each high school pupil registered in the schools each year.~~
4. For each high ~~schools~~ school district having a total high school enrollment of five hundred fifty or more pupils in average daily membership in grades nine through twelve, the amount of money resulting from multiplying the factor ~~1.20~~ 1.17 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.14 times the number of high school pupils in grades nine through twelve

* NOTE: Section 15-40.1-07 was also amended by section 1 of House Bill No. 1232, chapter 232, and section 2 of House Bill No. 1614, chapter 231.

registered in that school district times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.

5. For high schools having an approved alternative education program, the amount of money resulting from multiplying the factor in:

- a. Subsection 1 times the number of pupils registered in the alternative education program times the educational support per pupil as provided in section 15-40.1-06 if the alternative education program has less than seventy-five pupils in average daily membership.
- b. Subsection 2 times the number of pupils registered in the alternative education program times the educational support per pupil as provided in section 15-40.1-06 if the alternative education program has seventy-five or more, but less than one hundred fifty pupils in average daily membership.
- c. Subsection 3 times the number of pupils registered in the alternative education program times the educational support per pupil as provided in section 15-40.1-06 if the alternative education program has one hundred fifty or more, but less than five hundred fifty pupils in average daily membership.
- d. Subsection 4 times the number of pupils registered in the alternative education program times the educational support per pupil as provided in section 15-40.1-06 if the alternative education program has five hundred fifty or more pupils in average daily membership.

Every high school district ~~shall~~ must receive at least as much in total payments as it would have received if it had the highest number of pupils in the next lower category. However, no payment ~~shall~~ may be made for those pupils for whom federal agencies provide education. Such payments ~~shall~~ may not be made unless four or more units of standard high school work approved by the superintendent of public instruction are offered during the current year, only certificated teachers have been employed, and the other standards prescribed by this chapter have been met. Payments ~~shall~~ must be made to the high school district in which the student is enrolled for graduation and units of approved vocational education in accordance with the provisions of chapter 15-20.1, and other courses approved by the superintendent of public instruction, earned in another high school district shall be included to meet the minimum four required units. In the case of students enrolled in nonpublic schools for graduation or students enrolled in less than four units of standard high school work who are in their fourth year of high school coursework and who are enrolled in approved alternative high school curriculum programs, proportionate payments ~~shall~~ must be made to the public school district in which such student is enrolled for specific courses. School districts offering high school summer school programs ~~shall be~~ are eligible for proportionate payments provided each course offered in such programs satisfies requirements for graduation, comprises at least as many clock hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction. The superintendent may adopt rules regarding eligibility for school districts to receive proportionate payments for such summer education programs.

Districts that did not maintain high schools during the year of 1964-1965 ~~shall~~ are not be eligible for payments unless they have a minimum enrollment of twenty-five pupils if four years of high school work are offered, a minimum enrollment of twenty pupils if three years of high school work are offered, a minimum enrollment of fifteen pupils if two years of high school work are offered, and a minimum enrollment of ten pupils if one year of high school work is offered. Payments pursuant to this chapter to school districts in bordering states ~~shall~~ must be made after subtracting the amount realized from a ~~twenty mill~~ the mill levy in subsection 3 of section 15-40.1-06 in the sending school district divided by the total number of resident pupils enrolled in the school district plus the number of resident pupils from the district attending school in another state.

SECTION 4. AMENDMENT. Section 15-40.1-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-08. Elementary per-pupil payments - Amount. ~~There Payments~~ must be paid made from state funds to each school districts of the county district operating an elementary ~~schools~~ school and to each school districts district contracting to educate elementary pupils in a federal school, employing teachers holding valid certificates or permits in accordance with section 15-47-46 and chapter 15-36, payments based on the number of registered students at the beginning of each school year, adjusted as provided in section 15-40.1-09, as follows:

1. For each one-room rural ~~schools~~ there must be paid that school, the amount of money resulting from multiplying the factor ~~1.36~~ 1.29 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.28 times the number of pupils in that school in grades one through eight in average daily membership, up to a maximum of sixteen pupils, times the educational support per pupil as provided in section 15-40.1-06 for each of the first sixteen pupils in grades one through eight in average daily membership, and for. There must be paid .9 times each additional pupil in its school in grades one through eight in average daily membership ~~there shall be paid~~ .9 times the educational support per pupil as provided in section 15-40.1-06, except that no payment may be made for more than twenty pupils in average daily membership. If the one-room rural school is located in a school district with another elementary school, the weighting factor for the pupils in grades one through six must be based on the average daily membership in the district in grades one through six as provided in subsections 2 through 4. If the one-room rural school is located in a school district with another school that has pupils in grade seven or eight, the weighting factor for the pupils in grades seven and eight must be the same as that provided for in subsection 5.
2. For each elementary ~~schools~~ school in school districts having under one hundred pupils in average daily membership ~~there must be paid that~~ in grades one through six, the amount of money resulting from multiplying the factor ~~1.0~~ 1.045 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.09 times the number of pupils in that school in grades one through six in average daily membership in each classroom or for each teacher, up to a maximum of twenty pupils per classroom or per teacher, times the educational support per pupil as provided in section 15-40.1-06 for

each of the first twenty pupils in grades one through six in average daily membership in each classroom or for each teacher and for. There must be paid .9 times each additional pupil in that school in grades one through six in average daily membership in each classroom or for each teacher there shall be paid .9 times the educational support per pupil as provided in section 15-40.1-06, except that no payment may be made for more than twenty-five pupils in average daily membership in each classroom or for each teacher.

3. For each elementary schools school in school districts having one hundred or more pupils in average daily membership in grades one through six, and provided the districts in which such schools are located have an average daily membership of less than one thousand elementary pupils, there must be paid that in grades one through six, the amount of money resulting from multiplying the factor ~~.9~~ .9025 for the 1989-90 school year and, beginning July 1, 1990, the factor .905 times the number of pupils in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per pupil as provided in section 15-40.1-06 for each of the first thirty pupils in grades one through six in average daily membership in each classroom or for each teacher, except that no payment may be made for more than thirty pupils in average daily membership in each classroom or for each teacher.
4. For each elementary schools school in school districts having an average daily membership of one thousand or more elementary pupils, there must be paid that in grades one through six, the amount of money resulting from multiplying the factor .95 times the number of pupils in that school in grades one through six in average daily membership in each classroom or for each teacher times the educational support per pupil as provided in section 15-40.1-06 for each of the first thirty pupils in grades one through six in average daily membership in each classroom or for each teacher, except that no payment may be made for more than thirty pupils in average daily membership in each classroom or for each teacher.
5. For each of the above classes of elementary schools, except for one-room rural schools that are not located in a district with another school that has pupils in grade seven or eight, there must be paid that to each school the amount of money resulting from multiplying the factor ~~1.0~~ 1.005 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.01 times the number of pupils in that school in grades seven and eight in average daily membership in each classroom or for each teacher times the educational support per pupil as provided in section 15-40.1-06 for each of the first thirty pupils in grades seven and eight in average daily membership in each classroom or for each teacher, except that no payment may be made for more than thirty pupils in average daily membership in each classroom or for each teacher.
6. For each elementary schools school having pupils under the compulsory age for school attendance, but not less than three years of age, in a special education program approved by the director of special education, there must be paid that the amount of money resulting from multiplying the factor ~~.49~~ .75 for the 1989-90 school year and, beginning July 1, 1990, the factor 1.01 times the

educational support per pupil as provided in section 15-40.1-06 for each number of special education pupil pupils in that school under the compulsory age for school attendance in average daily membership in each classroom or for each teacher times the educational support per pupil as provided in section 15-40.1-06.

7. For each elementary ~~schools~~ school providing ~~kindergartens which are a kindergarten~~ that is established according to provisions of section 15-45-01, and for each out-of-state kindergarten ~~programs~~ program, approved by the state superintendent and utilized by North Dakota school districts bordering other states, ~~there must be paid that the amount of money resulting from multiplying the factor .50 times the number of pupils in that school in average daily membership in each classroom or for each teacher times the educational support per-pupil payment for that elementary school as determined under this section for each of the first twenty-five pupils in average daily membership in each classroom or for each teacher,~~ except that no payment may be made for more than twenty-five pupils in average daily membership in each classroom or for each teacher. The full per-pupil payment shall be made only to those kindergarten programs providing the equivalent of ninety full days of classroom instruction during any twelve-month period. Programs providing shorter periods of instruction during the same time period shall receive a proportionately smaller per-pupil payment.

Every school district ~~shall~~ must receive at least as much in total payments for elementary pupils as it would have received if it had the highest number of pupils in the next lower category. Payments pursuant to this chapter to school districts in bordering states ~~shall~~ must be made after subtracting the amount realized from a ~~twenty mill~~ the mill levy in subsection 3 of section 15-40.1-06 in the sending school district divided by the total number of resident pupils enrolled in the school district plus the number of resident pupils from the district attending school in another state.

SECTION 5. AMENDMENT. Section 15-40.1-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-16. Aid for transportation. There shall be paid from state funds to each school district providing schoolbus transportation in contract schoolbuses or in district-owned and operated schoolbuses, and to school districts with students riding commercial buses to and from school within the incorporated limits of a city, the following amounts:

1. For schoolbuses and school vehicles transporting pupils who live outside the incorporated limits of the city in which the school the pupil is enrolled is located, a sum equal to ~~thirty-five and one-half~~ twenty-five cents during each year of the ~~1987-89~~ 1989-91 biennium for vehicles having a capacity of nine or fewer pupils and ~~seventy-two~~ sixty-eight cents per mile [1.61 kilometers] for each year of the ~~1987-89~~ 1989-91 biennium for schoolbuses having a capacity of ten or more pupils. In addition, those school districts qualifying for payments for buses having a capacity of ten or more pupils ~~shall be~~ are entitled to an amount equal to ~~nineteen~~ twenty-five cents per day for each public school pupil living outside the city limits who is transported in such buses.

2. For pupils who ride schoolbuses or commercial buses to or from school and who live within the incorporated limits of the city in which the school the pupil is enrolled is located, a sum equal to ~~nine~~ twelve and one-half cents per pupil per one-way trip. However, no payment shall be made under this subsection for a student who rode on a vehicle for which payments are claimed under subsection 1.

The mileage payments provided for in this section shall be made to each school district for transporting pupils to and from school. Such payments shall be made only to school districts operating schoolbuses in accordance with the laws of this state relating to standards for schoolbuses, and to the qualifications of schoolbus drivers. Certification as to the compliance with the laws of this state in regard to schoolbuses and their drivers shall be made in such manner and in such detail as the superintendent of public instruction may require at the time an application is made for payments provided under this section. The superintendent of public instruction shall do an onsite audit of the books and records, regarding transportation cost, pupils transported and miles traveled, of at least ten school districts each fiscal year to verify compliance with section 15-40.1-16.

* SECTION 6. AMENDMENT. Subsection 1 of section 15-40.2-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Such payments as are received for ~~him~~ that pupil from state payments received by the admitting district, less the average amount per North Dakota resident pupil enrolled in the school district realized from ~~a twenty mill~~ the school district levy in subsection 3 of section 15-40.1-06; and

SECTION 7. TRANSITION. Notwithstanding the factors in section 15-40.1-07 and 15-40.1-08, the per-pupil payment in subsection 2 of section 15-40.1-06, and the mill levy in subsection 3 of section 15-40.1-06, every school district must receive at least as much in total payments for each year of the 1989-91 biennium as it would have received had it received the amount of money resulting from multiplying the average daily membership for the previous year or the current year's fall enrollment, whichever is greater, times the appropriate factor in sections 15-40.1-07 and 15-40.1-08 in effect during the 1988-89 school year, times the educational support per pupil in the amount of one thousand three hundred sixty dollars, less the product of twenty mills times the latest available net assessed and equalized valuation of property of the school district. The enrollments must be adjusted as provided in section 15-40.1-09.

SECTION 8. CONTINGENT SEPARATE AND ADDITIONAL PER-PUPIL PAYMENT. The superintendent of public instruction shall distribute a separate and additional per-pupil payment from any unspent amount appropriated to the grants - foundation aid program for the biennium beginning July 1, 1989, and ending June 30, 1991, in the May 1, 1991, foundation aid payment to schools. Any payment made under this section must be on a weighted basis to be determined according to chapter 15-40.1.

Approved April 28, 1989
Filed April 28, 1989

- * NOTE: Section 15-40.2-03 was also amended by section 1 of House Bill No. 1400, chapter 234, and section 4 of House Bill No. 1614, chapter 231.

CHAPTER 214

SENATE BILL NO. 2275
(Moore)

SCHOOL DISTRICT FUEL PURCHASES

AN ACT to create and enact a new section to chapter 15-34.2 of the North Dakota Century Code, relating to school district fuel purchases from registered vendors; and to amend and reenact section 15-34.2-07.1 of the North Dakota Century Code, relating to school district fuel purchases by negotiation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-34.2-07.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-34.2-07.1. School transportation ~~and fuel~~ contracts - Direct negotiation. Notwithstanding sections 15-34.2-07 and 15-34.2-08, a contract for the transportation of schoolchildren, ~~or a contract for the purchase of fuel for vehicles~~ which was originally bid by and let to a contractor may be renewed by direct negotiation with that contractor provided that two or more written quotations are obtained for the service ~~or fuel~~ when possible, or upon sealed bids. At least thirty days before awarding a directly negotiated contract, the school district shall, by published notice, request quotations for the service ~~or fuel~~ to be provided. All quotations obtained must be kept on file for a period of at least one year after their receipt. If a contract is made by direct negotiation, all quotations must be maintained as public information. If a contract is made upon sealed bids, the procedure for advertising and awarding bids must conform to the provisions of section 15-34.2-07 except as otherwise provided in this section. A directly negotiated contract may only be entered into at a public meeting of the school district board during which meeting the patrons of the school district are given an opportunity to appear and comment. Notice of the school board meeting must be published at least one week prior to the meeting in a legal newspaper of wide circulation within the school district.

SECTION 2. A new section to chapter 15-34.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

School fuel contracts. A school board may purchase transportation fuel or heating fuel as needed by obtaining written quotes from all vendors who have registered with the school district for that school year. School districts must publish registration information at least once each year and may register interested vendors throughout the year.

Approved March 28, 1989
Filed March 28, 1989

* NOTE: Section 15-34.2-07.1 was also amended by section 6 of House Bill No. 1477, chapter 209.

CHAPTER 215

HOUSE BILL NO. 1048
(Legislative Council)
(Interim Education Finance Committee)

SCHOOLBUS DRIVER AGE

AN ACT to amend and reenact section 15-34.2-14 of the North Dakota Century Code, relating to the age of schoolbus drivers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-34.2-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-34.2-14. Qualifications, character, and age of schoolbus and school vehicle drivers. The driver of a schoolbus or a school vehicle ~~shall~~ must be in good physical and mental health, able-bodied, free from communicable diseases, and ~~shall~~ must have normal use of both hands, both feet, both eyes, and both ears. It ~~shall be~~ is the duty of school boards to designate reputable physicians to examine each driver annually. ~~It shall be the duty of each~~ Each driver to must present ~~the~~ a physician's certificate of physical fitness to the employing school board before a contract is signed. Such driver ~~shall~~ must possess a good moral character, ~~shall~~ must be at least ~~eighteen and not more than sixty-five~~ twenty-one years of age, and ~~shall be required to~~ must have a North Dakota driver's license. However, the school board, in its discretion, may extend lower the ~~maximum~~ minimum age of a driver ~~beyond sixty-five~~ below twenty-one. This section does not prohibit regular members of the faculty of an elementary or high school from operating vehicles for the purpose of transporting students to regular or special events related to the educational programs in which the students are enrolled.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 216

HOUSE BILL NO. 1240
(Hoffner)

TEACHER'S TRANSCRIPT

AN ACT to create and enact a new section to chapter 15-36 of the North Dakota Century Code, relating to the issuance of teachers' certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-36 of the North Dakota Century Code is hereby created and enacted to read as follows:

Teachers' certificates - Issuance by superintendent of public instruction. A student who has met all the criteria necessary to receive a teacher's certificate, but who has not graduated from a college or university, may request a copy of the student's completed transcript from the college or university the student attended. Within ten days of the request by the student, the college or university must mail a copy of the transcript to the superintendent of public instruction showing that the student has met all the criteria necessary to receive a teacher's certificate except graduation. The transcript must indicate areas in which the student has a major or minor.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 217

HOUSE BILL NO. 1098
(Committee on Education)
(At the request of the Teachers' Fund for Retirement)

TFFR BOARD, DISABILITY, AND WITHDRAWAL

AN ACT to amend and reenact sections 15-39.1-04, 15-39.1-06, subdivision b of subsection 1 of section 15-39.1-10.3, subsection 3 of section 15-39.1-18, and section 15-39.1-20 of the North Dakota Century Code, relating to definitions, board organization, multiple plan membership, disability retirement, and withdrawal under the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-39.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-04. Definitions. For purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Actuarial equivalent" means the annual amount determined by calculations based on mortality tables, purchasable with a given amount at a stated age.
2. "Base salary" as applied to the purchase of additional service credit means the teacher's first annual salary earned in North Dakota immediately following the period for which service credit may be purchased.
3. "Beneficiary" means the person designated in writing by the member or, in the absence of such designation, the member's surviving spouse, if any.
4. ~~3.~~ "Board" means the board of trustees of the teachers' fund for retirement.
5. ~~4.~~ "Contract" means a written agreement with any school board or other governing body of any school district of this state or a letter of appointment by a state institution, state agency, or other employer participating in the fund.
6. ~~5.~~ "Fund" means the teachers' fund for retirement.
7. ~~6.~~ "Interest", as applied to member assessments or as applied to the repurchase of credit for withdrawn years, is six percent compounded annually.

* NOTE: Section 15-39.1-04 was also amended by section 1 of House Bill No. 1507, chapter 218.

7. "Retirement" means cessation of covered employment and acceptance of a benefit under former chapter 15-39, or chapter 15-39.1 or 15-39.2.
8. "Retirement annuity" means the payments made by the fund to a member after retirement, these payments beginning on the first or fifteenth day of the month following eligibility for a benefit.
9. "Salary" means a member's earnings in eligible employment under this chapter for teaching, supervisory, and administrative services during a school year as reported on the member's federal income tax withholding statements plus the value of any fringe benefits selected at the member's option in lieu of monetary remuneration. "Salary" does not include fringe benefits such as payments for unused sick leave or vacation leave, housing allowances, transportation expenses, early retirement incentive pay, severance pay, or medical insurance premiums paid by the employer in addition to salary.
10. "State institution" includes all state colleges and universities, the school of forestry, the school of science, the school for the blind, the school for the deaf, the Grafton state school, and the North Dakota industrial school.
11. "Teacher" includes:
- a. Includes -
- ↔ All persons who are certified to teach in this state who are contractually employed in teaching in any state institution or by any school board or other governing body of any school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers employed in any state institution or in the school system of any school district in this state, except that the superintendent and assistant superintendent of the Grafton state school may be brought within this definition at their option.
- ↔ b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, state school supervisors and inspectors, every person engaged as president, dean, school librarian, or registrar of any state institution, the secretary executive director and professional staff of the North Dakota education association, all assistant secretaries and professional staff of such association, the commissioner of higher education, and the professional staff of the North Dakota high school activities association.
- ↔ c. The executive director of the North Dakota school boards association, the executive secretary of the fund, the executive director and professional staff of the North Dakota council of school administrators, and certified staff of teachers centers, but only if the person was previously a member of and has credits in the fund.

b. ~~Does not include persons connected with any professional school or college of any state institution as lecturers who are engaged in the practice of their respective professions and with whom teaching is merely an avocation.~~

d. Employees of institutions under the control and administration of the state board of higher education who are members of the fund on the effective date of this Act.

SECTION 2. AMENDMENT. If Senate Bill No. 2030 is not approved by the fifty-first legislative assembly or does not become effective, section 15-39.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-06. Organization of board. The board may hold meetings as necessary for the transaction of business and a meeting may be called by the president or any two members of the board upon reasonable notice to the other members of the board. The president for the ensuing year must be elected at the first meeting following July first of each year. The board may employ an administrator and a deputy administrator, who need not be ~~a member~~ members of the board and who shall perform duties as the board prescribes. The deputy administrator may serve and vote, on behalf of the administrator, on the state investment board pursuant to section 21-10-01. Except for disbursing money for the payment of claims and actuarial consultant and auditor fees, the board shall expend money for administrative purposes, as limited by the appropriation first made by the legislative assembly, by preparing an appropriate voucher and submitting the voucher to the office of management and budget.

SECTION 3. AMENDMENT. If Senate Bill No. 2030, as approved by the fifty-first legislative assembly, becomes effective, section 15-39.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-06. Organization of board. The board may hold meetings as necessary for the transaction of business and a meeting may be called by the president or any two members of the board upon reasonable notice to the other members of the board. The president for the ensuing year must be elected at the first meeting following July first of each year. ~~The board may employ an administrator, who need not be a member of the board and who shall perform duties as the board prescribes.~~ Except for disbursing money for the payment of claims and actuarial consultant and auditor fees, the board shall expend money for administrative purposes, as limited by the appropriation first made by the legislative assembly, by preparing an appropriate voucher and submitting the voucher to the office of management and budget.

SECTION 4. AMENDMENT. If Senate Bill No. 2030, as approved by the fifty-first legislative assembly, becomes effective and subsequently terminates by its own provisions, section 15-39.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-06. Organization of board. The board may hold meetings as necessary for the transaction of business and a meeting may be called by the president or any two members of the board upon reasonable notice to the other members of the board. The president for the ensuing year must be elected at the first meeting following July first of each year. The board may employ an

administrator and a deputy administrator, who need not be a ~~member~~ members of the board and who shall perform duties as the board prescribes. The deputy administrator may serve and vote, on behalf of the administrator, on the state investment board pursuant to section 21-10-01. Except for disbursing money for the payment of claims and actuarial consultant and auditor fees, the board shall expend money for administrative purposes, as limited by the appropriation first made by the legislative assembly, by preparing an appropriate voucher and submitting the voucher to the office of management and budget.

* SECTION 5. AMENDMENT. Subdivision b of subsection 1 of section 15-39.1-10.3 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- b. If a teacher terminates eligible employment under the fund, if that teacher has not received a refund of member assessments, and if that teacher begins eligible employment in a plan described in paragraph 1 or 2 of subdivision a, that teacher may elect to remain an inactive member of the fund without refund of assessments. The election must be made within ninety days after beginning the eligible employment or by October 1, 1987, whichever is later. The board shall terminate the inactive status of a teacher under this subdivision if the teacher gains eligible employment under this chapter or if the teacher terminates eligible employment under a plan described in paragraph 1 or 2 of subdivision a.

SECTION 6. AMENDMENT. Subsection 3 of section 15-39.1-18 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The disability annuity continues until the death or prior recovery of the disabled annuitant. The board shall ascertain by periodic medical examinations annually, or more often if necessary in the opinion of the board, the continued disability status of a disabled annuitant.

SECTION 7. AMENDMENT. Section 15-39.1-20 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-20. Withdrawal from fund. When a member of the fund ceases to be eligible under the terms of this chapter to participate in the fund, the member may, after a period of one hundred twenty days, withdraw from the fund and ~~shall be~~ is then entitled to receive a refund of assessments accumulated with interest. The one-hundred-twenty-day requirement may be waived by the board when it has evidence the teacher will not be returning to teach in North Dakota. The refund ~~shall be~~ is in lieu of any other benefits to which the member may be entitled under the terms of this chapter. The accumulated assessments of a member who ceases to be eligible to participate in the fund before accumulating ~~ten~~ five years of service credit ~~shall must~~ be automatically refunded. The assessments plus interest earned, if not claimed by the member, ~~shall must~~ be returned during the month of January next following the date of termination. The automatic refund ~~shall must~~ be waived provided the member presents the board with a statement of intent to return to teach in North Dakota within thirty-six months after eligibility to participate in the fund ceases. The board may waive the automatic refund for members who present to the board a statement of intent to return to teach in North Dakota within a period exceeding thirty-six months after eligibility to participate in the fund ceases.

Approved April 14, 1989
Filed April 17, 1989

* NOTE: Section 15-39.1-10.3 was also amended by section 1 of House Bill No. 1586, chapter 223.

CHAPTER 218

HOUSE BILL NO. 1507
(Representatives Kingsbury, Gates)
(Senators Kelsh, Tallackson)

SCHOOL DISTRICT REORGANIZATION

AN ACT to create and enact seven new sections to title 15 of the North Dakota Century Code, relating to the establishment of planning grants and supplemental pupil payments for the restructuring of school district boundaries; to amend and reenact paragraph 2 of subdivision a of subsection 11 of section 15-39.1-04 of the North Dakota Century Code, relating to membership in the teachers' fund for retirement; to provide an appropriation; to provide for distribution of unspent funds; to provide for a statement of legislative intent; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Paragraph 2 of subdivision a of subsection 11 of section 15-39.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- (2) The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, state school supervisors and inspectors, every person engaged as president, dean, school librarian, or registrar of any state institution, the secretary of the North Dakota education association, all assistant secretaries and professional staff of such association, the commissioner of higher education, the professional staff of an interim school district, and the professional staff of the North Dakota high school activities association.

SECTION 2. A new section to title 15 of the North Dakota Century Code is hereby created and enacted to read as follows:

School district restructuring - Rules. The superintendent of public instruction, with assistance from the state board of public school education, shall adopt rules under chapter 28-32 for the purpose of administering planning grants and supplemental payments to contiguous school districts or parts of school districts for the purposes of planning and implementing the restructuring of school district boundaries for the purpose of increasing the educational opportunities of students and the sharing of school administrators. The superintendent of public instruction, if requested, shall provide assistance to school districts in the development and implementation of a plan for the restructuring of contiguous school districts. The superintendent of public instruction may provide other services if requested by the school districts. The plan and any subsequent

* NOTE: Section 15-39.1-04 was also amended by section 1 of House Bill No. 1098, chapter 217.

amendments must be adopted by a majority vote of the membership of each of the participating school boards and the state board of public school education prior to becoming eligible to receive supplemental pupil payments.

SECTION 3. A new section to title 15 of the North Dakota Century Code is hereby created and enacted to read as follows:

School district restructuring - Planning grant - Final report.

1. Upon receipt of a request for a planning grant from a consortium of school districts whose school boards have by majority vote approved participation in a planning grant to study the restructuring of school boundaries and upon approval of the state board of public school education, the superintendent of public instruction shall provide financial assistance and, if requested, technical assistance.
2. The planning grant must include the study and analysis of:
 - a. Past and projected enrollment trends and other student demographic characteristics and special service needs.
 - b. School facilities.
 - c. Student transportation systems.
 - d. Financial resources available from local, state, and federal sources.
 - e. Personnel characteristics, capabilities, and assignments.
 - f. Other factors as deemed important.
3. The final report must include:
 - a. An analysis of data studied, the findings, and recommendations.
 - b. A plan for the restructuring of the participating school districts.
 - c. A time line for the implementation of the plan.
 - d. Plans for the establishment of an interim district board to oversee the implementation of the plan.
4. Upon approval of the preliminary plan for the restructuring of the participating school districts by a majority vote of the school board members and the state board of public school education, the superintendent of public instruction shall make available supplemental payments as provided in section 6 of this Act.

SECTION 4. A new section to title 15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interim district board. The interim district board is composed of at least one school board member appointed by the school board of each participating school district. Each representative must be a member of the

school board of the school district of the appointing school board. The representative shall serve at the pleasure of the appointing school board and may be recalled by a majority vote of the appointing board. Each board member's term expires at the end of that member's term on the local school board. The board shall adopt bylaws for the conduct of its business and is governed, unless specifically provided otherwise, by the laws applicable to school districts.

SECTION 5. A new section to title 15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interim district board - Powers and duties.

1. The interim district board shall:

- a. Coordinate the programs and services according to the terms of the approved plan for school district restructuring.
- b. Implement the plan for delivering education services.
- c. Implement methods for sharing administrative and management services. For the purposes of this subdivision an administrator includes:
 - (1) Executive administrators, which include the superintendent and such assistants as deputy, associate, and assistant superintendents who perform activities with respect to the general direction and management of the affairs of the local school district.
 - (2) Business administrators, which includes personnel associated with activities concerned with purchasing, paying for, transporting, exchanging, and maintaining goods and services for the school district.
- d. Develop a process for school districts or parts of school districts to join or withdraw from the projected restructured school district.
- e. Develop procedures for a pupil who is a resident of a member district to enroll in programs or courses offered by another member district and the sharing of costs.
- f. Establish methods for involving parents and other constituents of the participating school districts.
- g. Review the plan annually and propose necessary amendments to the member school districts and to the state board of public school education for adoption by a majority vote of each body.
- h. Submit an annual report to the participating school boards of the participating school districts at their annual meetings in July of each year and to the superintendent of public instruction on the same date.

SECTION 6. A new section to title 15 of the North Dakota Century Code is hereby created and enacted to read as follows:

State aid - Planning grants - Supplemental pupil payments.

1. Payments for approved planning grants must be made quarterly for a period not to exceed one year.
2. Each participating school district is entitled to receive state aid for a period not to exceed three years in the amount of from one hundred twenty-five to one hundred sixty-five dollars per full-time equivalent pupil in average daily membership the previous year in the participating school districts. The superintendent of public instruction shall distribute the payments pursuant to section 15-40.1-05. Prior to being entitled to the maximum payment under this subsection, a participating school district must have one or more administrators jointly assigned and the participating districts' plan must be attempting to improve the quality of instruction as determined by the superintendent of public instruction.
3. Upon adoption of the restructuring plan by the voters of the participating school districts pursuant to chapter 15-27.3, the newly formed school district is eligible to receive the supplemental pupil payment for an additional period of two years following the effective date of the reorganization based on the number of full-time equivalent students in average daily membership during the year prior to the effective date of the reorganization.

SECTION 7. A new section to title 15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Assistance from superintendent of public instruction. The superintendent of public instruction may hire a state school district restructuring coordinator and assistants as may be necessary to assist school districts in the planning, organizing, and implementation of the plan to restructure school districts.

SECTION 8. A new section to title 15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Report to the legislative council and legislative assembly. The superintendent of public instruction shall report to the legislative council interim committee on education regarding the status of the planning grants and the known number of interim school districts and to the legislative assembly at the organizational session in 1990 regarding the status of planning grants for the biennium and the number of school districts that are implementing the plans developed under the planning grants during the second year of the 1989-91 biennium.

SECTION 9. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$180,000, or so much as may be necessary, to the superintendent of public instruction for the purpose of defraying the salary and expenses of the state school district restructuring coordinator, the sum of \$200,000, or so much thereof as may be necessary, for the purpose of making planning grants to the projected restructured districts, and the sum of \$874,500, or so much thereof as may be necessary, to the superintendent of public instruction for the purpose of making payments of from \$125 up to \$165 per pupil to the projected restructured districts, with an approved plan, for the

biennium beginning July 1, 1989, and ending June 30, 1991. For the budget year 1990-91, if the state aid required to meet section 6 of this Act exceeds the amount available, the superintendent of public instruction shall reduce the supplemental pupil payments proportionally so that the state aid to be paid during the 1989-91 biennium does not exceed \$1,074,500.

SECTION 10. If House Bill No. 1637 is approved by the fifty-first legislative assembly, becomes effective, and contains a provision authorizing the superintendent of public instruction to distribute any unspent amount appropriated to the grants - foundation aid program, then a new section is hereby created and enacted to read as follows:

DISTRIBUTION OF UNSPENT FUNDS. If the amount appropriated pursuant to section 9 of this Act exceeds the amount necessary to make the payments as required in section 6 of this Act, the unspent amount must be made available to the superintendent of public instruction to distribute pursuant to the superintendent's authority to distribute any unspent amount appropriated to the grants - foundation aid program under the provisions of House Bill No. 1637.

SECTION 11. LEGISLATIVE INTENT. If school districts to the east and west of North Dakota highway 83 qualify for the pilot project, it is the intent of the legislative assembly that at least one pilot project be located on the east side of North Dakota highway 83 and at least one pilot project be located on the west side of North Dakota highway 83.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 28, 1989

Filed April 28, 1989

CHAPTER 219

HOUSE BILL NO. 1371
(Representatives L. Hanson, Rydell, Gates)
(Senator Wogsland)

TFFR BOARD MEMBERSHIP

AN ACT to amend and reenact section 15-39.1-05 of the North Dakota Century Code, relating to the membership of the board of trustees of the teachers' fund for retirement; to provide for application of this Act; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-39.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-05. Management of fund. The fund ~~shall~~ must be managed by a board of trustees, which ~~shall consist~~ consists of the state treasurer, the superintendent of public instruction, and three persons ~~to be~~ appointed by the governor. One of the appointees ~~shall must~~ be a woman and a full-time school administrator, one of the appointees must be actively employed as a full-time classroom teacher or as a full-time school counselor, and one of the appointees must be a retired member of the fund. A majority of the board ~~shall~~ must at all times consist of persons who are members of the fund. The term of the office of the appointees ~~shall be~~ is three years with ~~said those~~ terms fixed to terminate on June thirtieth of alternate years. The term of each appointee ~~shall commence~~ commences on July first next succeeding ~~his~~ the appointee's appointment.

SECTION 2. APPLICATION OF ACT. The qualifications for appointment provided under section 1 of this Act apply only to appointees whose terms commence on or after the effective date of this Act.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 31, 1989.

Approved March 29, 1989
Filed March 30, 1989

* NOTE: Section 15-39.1-05 was also amended by section 2 of Senate Bill No. 2410, chapter 635.

CHAPTER 220

HOUSE BILL NO. 1102
(Committee on Education)
(At the request of the Teachers' Fund for Retirement)

TFFR PAYMENTS

AN ACT to amend and reenact subsection 1 of section 15-39.1-09 of the North Dakota Century Code, relating to assessment and contributions under the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 15-39.1-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as provided in subsection 2 of section 15-39.1-10.3, every teacher is a member of the fund and must be assessed upon the teacher's salary six and twenty-five hundredths percent per annum, which must be deducted ~~monthly~~, certified, and paid ~~monthly~~ to the fund by the disbursing official of the governmental body by which the teacher is employed. Every governmental body employing a teacher shall pay to the fund six and twenty-five hundredths percent per annum of the salary of each teacher employed by it. The disbursing official of the governmental body shall certify the ~~sums~~ governmental body payments and ~~pay the sums quarterly~~ remit the payments monthly to the fund.

Approved March 9, 1989

Filed March 9, 1989

* NOTE: Subsection 1 of section 15-39.1-09 was also amended by section 1 of House Bill No. 1233, chapter 221.

CHAPTER 221

HOUSE BILL NO. 1233
(Representatives L. Hanson, Martinson, Rydell)
(Senator Kelsh)

TFFR ASSESSMENTS AND BENEFIT ELIGIBILITY

AN ACT to amend and reenact subsection 1 of section 15-39.1-09 and subsection 1 of section 15-39.1-10 of the North Dakota Century Code, relating to assessments and eligibility for retirement benefits under the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 15-39.1-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as provided in subsection 2 of section 15-39.1-10.3, every teacher is a member of the fund and must be assessed upon the teacher's salary six and ~~twenty-five~~ seventy-five hundredths percent per annum, which must be deducted monthly and paid to the fund by the disbursing official of the governmental body by which the teacher is employed. Every governmental body employing a teacher shall pay to the fund six and ~~twenty-five~~ seventy-five hundredths percent per annum of the salary of each teacher employed by it. The disbursing official shall certify the sums and pay the sums quarterly to the fund.

SECTION 2. AMENDMENT. Subsection 1 of section 15-39.1-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The following members are eligible to receive monthly lifetime retirement benefits under this section:
 - a. All members who have completed five years of teaching credit and who have attained the age of sixty-five years.
 - b. All members who have a combined total of years of service credit, of which one year was completed after July 1, 1979, and years of age which equals ~~ninety~~ eighty-five.

Approved March 21, 1989
Filed March 23, 1989

* NOTE: Subsection 1 of section 15-39.1-09 was also amended by section 1 of House Bill No. 1102, chapter 220.

CHAPTER 222

HOUSE BILL NO. 1094
(Committee on Education)
(At the request of the Teachers' Fund for Retirement)

TFFR BENEFITS AND OPTIONS

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to postretirement benefit adjustments under the teachers' fund for retirement; to amend and reenact subsection 2 of section 15-39.1-10 and section 15-39.1-16 of the North Dakota Century Code, relating to computation and optional forms of retirement benefits under the teachers' fund for retirement; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 15-39.1-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The amount of retirement benefits is one and ~~twenty two hundredths~~ two hundred seventy-five thousandths percent of the final average monthly salary of the member multiplied by the number of years of credited service. For the purposes of this subsection, final average monthly salary means one thirty-sixth of the total of the member's highest annual salaries earned between July first of a calendar year and June thirtieth of the subsequent calendar year for any three years of service under the fund.

SECTION 2. A new section to chapter 15-39.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Postretirement adjustments. An individual who on June 30, 1989, is receiving monthly benefits from the fund on an account paid under this chapter or under former chapter 15-39 is entitled to receive an increase in benefits equal to five cents times the individual's number of years of service credit under the fund times the number of years the individual has drawn benefits from the fund.

* SECTION 3. AMENDMENT. Section 15-39.1-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-16. Option of teachers eligible to receive annuities. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:

Option one. Upon the death of the teacher, the reduced retirement allowance ~~shall~~ must be continued throughout the life of, and paid to, the person as the teacher has nominated by written

* NOTE: Section 15-39.1-16 was also amended by section 1 of Senate Bill No. 2156, chapter 226.

designation filed with the board at the time of retirement. If the person designated to receive the teacher's reduced retirement allowance predeceases the teacher, the reduced retirement allowance must be converted to a single life retirement annuity under which benefit payments, if the person designated died prior to July 1, 1989, must begin on July 1, 1989, or, if the person designated dies on or after July 1, 1989, must begin on the first day of the month following the death of the person designated.

Option two. Upon the death of the teacher, one-half of the reduced retirement allowance ~~shall~~ must be continued throughout the life of, and paid to, the person as the teacher has nominated by written designation filed with the board at the time of retirement. If the person designated to receive the teacher's reduced retirement allowance predeceases the teacher, the reduced retirement allowance must be converted to a single life retirement annuity under which benefit payments, if the person designated died prior to July 1, 1989, must begin on July 1, 1989, or, if the person designated dies on or after July 1, 1989, must begin on the first day of the month following the death of the person designated.

Option three. Upon the death of the teacher within five years of the commencement of annuity payments, the payments ~~shall~~ must be continued for the remainder of the five-year period to the person as the teacher has nominated by written designation filed with the board at the time of retirement.

Option four. Upon the death of the teacher within ten years of the commencement of annuity payments, the payments ~~shall~~ must be continued for the remainder of the ten-year period to the person as the teacher has nominated by written designation filed with the board at the time of retirement.

Option five. Level retirement income with social security option, which is available to teachers retiring before social security is payable.

The amount of the reduced retirement allowance payable upon the exercise of any of these options ~~shall~~ must be computed upon an actuarial basis through the use of standard actuarial tables and based upon the ages of the teacher and the teacher's designated beneficiary.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act applies to benefits payable after June 30, 1989.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 223

HOUSE BILL 1
(Mertens, R.)223
R.M. Secs. 1-8

LEGISLATORS 1

Disapproved

AN ACT to create and enact a new section of the North Dakota Century Code, relating to participation by members of the legislative assembly in the public employees retirement system; to amend and reenact sections 15-39.1-10.3, 39-03.1-14.1, 54-52-01, 54-52-02, 54-52-17, and 54-52-17.2 of the North Dakota Century Code, relating to retirement plan provisions under the public employees retirement system and the teachers' fund for retirement; and to repeal sections 18-11-15.1, 39-03.1-08.1, 40-45-10.1, 40-46-09.2, and 54-52-17.3 of the North Dakota Century Code, relating to purchase of legislative service credit under the alternate firemen's relief association retirement plan, the highway patrolmen's system, city police pension plans, city employee pension plans, and the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-39.1-10.3 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-10.3. Multiple plan membership - Eligibility for benefits - Amount of benefits.

1. a. For the purpose of determining vesting of rights under this chapter, a teacher's years of service credit is the total of the years of service credit earned in the fund and the years, with twelve months of compensation equal to a year, of service employment, earned in any number of the following:

- (1) The public employees retirement system and service earned as a member of the legislative assembly.
- (2) The highway patrolmen's retirement system.

- b. If a teacher terminates eligible employment under the fund, if that teacher has not received a refund of member assessments, and if that teacher begins eligible employment in a plan described in paragraph 1 or 2 of subdivision a, that teacher may elect to remain an inactive member of the fund without refund of assessments. The election must be made within ninety days after beginning the eligible employment or by October 1, 1987, whichever is later. The board shall terminate the inactive status of a teacher under this subdivision if the teacher gains eligible employment under this chapter or if the teacher terminates eligible employment under a plan described in paragraph 1 or 2 of subdivision a.

* NOTE: Section 15-39.1-10.3 was also amended by section 5 of House Bill No. 1098, chapter 217.

- c. A teacher who has service credit in the fund and in any number of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter, calculated by using the certified salaries of the retirement plan of last membership in the computation of final average monthly salary. The board shall calculate benefits for a teacher under this section by using only those years of service credit earned under this chapter.
2. If a teacher, who is a member of the fund, is also employed in any position where membership in the public employees retirement system is required, then for purposes of current employment the teacher is a member of the retirement system in which the teacher has the most years of service credit. If the teacher has an equal amount of service credit in both the fund and the public employees retirement system, the teacher is a member of the public employees retirement system. The board of trustees of the teachers' fund for retirement and the state retirement board shall jointly certify to the appropriate employers of the teacher the fact of the beginning and termination of eligibility for dual membership in the respective retirement systems and the retirement system to which the teacher is required to be a member under this subsection. The employers upon receipt of this certification shall pay over to that retirement system the member assessments and employer contributions at the rates currently existing for that system. If the teacher is required to be a member of the public employees retirement system, the board, at the teacher's election, shall designate the teacher an inactive member of the fund without refund of the teacher's accumulated assessments with interest until the teacher ceases the employment which requires membership in both the fund and the public employees retirement system.
3. Under rules adopted by the board, an individual whose service credit was canceled when that individual received a refund of assessments at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 1 or 2 of subdivision a of subsection 1, repurchase that service credit that was canceled.

SECTION 2. AMENDMENT. Section 39-03.1-14.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-14.1. Multiple plan membership - Eligibility for benefits - Amount of benefits.

1. a. For the purpose of determining eligibility for benefits under this chapter, a member's years of service is the total of the years of service earned under this chapter and the years of service employment or years of service credit earned in any number of the following:
 - (1) The public employees retirement system and service earned as a member of the legislative assembly.
 - (2) The teachers' fund for retirement.

- b. If a member terminates eligible employment under this chapter, if that member has not received a refund of the member's accumulated deductions, and if that member begins eligible employment in a plan described in paragraph 1 or 2 of subdivision a, that member may elect to remain an inactive member of the system without refund of the member's accumulated deductions. The election must be made within ninety days after beginning the eligible employment or by October 1, 1987, whichever is later. The board shall terminate the inactive status of a member under this subdivision if the member gains eligible employment under this chapter or if the member terminates eligible employment under a plan described in paragraph 1 or 2 of subdivision a.
 - c. A member who has service credit in the system and in any number of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter, calculated by using the certified salaries of the retirement plan of last membership. The board shall calculate benefits for an employee under this subsection by using only those years of service employment earned under this chapter.
2. Under rules adopted by the board, an individual whose service credit was canceled when that individual received a refund of assessments at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 1 or 2 of subdivision a of subsection 1, repurchase that service credit that was canceled.

* SECTION 3. AMENDMENT. Section 54-52-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-01. Definition of terms. As used in this chapter, unless the context otherwise requires:

1. "Account balance" means the total contributions made by the employee, the vested portion of the vesting fund as of June 30, 1977, and interest credited thereon at the rate established by the board.
2. "Beneficiary" means any person in receipt of a benefit provided by this plan or any person designated by a participating member to receive benefits.
3. "Eligible employee" means all permanent employees who meet all of the eligibility requirements set by this chapter and who are eighteen years or more of age, and ~~shall include~~ includes appointive and elective officials, including members of the legislative assembly, at their sole election; provided, that judges of the supreme and district courts eligible under section 54-52-02.3 and appointed officials eligible under section 54-52-02.5 ~~shall be~~ are eligible employees and shall participate in the public employees retirement system.
4. "Employee" means any person employed by a governmental unit, whose compensation is paid out of the governmental unit's funds, or funds controlled or administered by a governmental unit, or paid by the

* NOTE: Section 54-52-01 was also amended by section 1 of Senate Bill No. 2461, chapter 663; section 1 of House Bill No. 1143, chapter 662; and section 1 of Senate Bill No. 2149, chapter 664.

federal government through any of its executive or administrative officials; certified employees of a school district means those employees eligible to participate in the teachers' fund for retirement who, except under subsection 2 of section 54-52-17.2, are not eligible employees under this chapter.

5. "Employer" means a governmental unit.
6. "Funding agent" or "agents" means an investment firm, trust bank, or other financial institution which the retirement board may select to hold and invest the employers' and members' contributions.
7. "Governmental unit" means the state of North Dakota or a county or city thereof, a school district, including the Fargo school district, or any combination thereof, a district health unit, and the Garrison Diversion Conservancy District.
8. "Member of the legislative assembly" means a member of the house of representatives or the senate of the state of North Dakota who has taken and subscribed to the oath of office.
9. "Participating member" means all eligible employees who through payment into the plan have established a claim against the plan.
- ~~9-~~ 10. "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and more than five months each year.
- ~~10-~~ 11. "Prior service" means service or employment prior to July 1, 1966, or, in the case of members of the legislative assembly, service as a member of the legislative assembly prior to July 1, 1989.
- ~~11-~~ 12. "Prior service credit" means such credit toward a retirement benefit as the retirement board may determine under the provisions of this chapter.
- ~~12-~~ 13. "Public employees retirement system" means the retirement plan and program established by this chapter.
- ~~13-~~ 14. "Retirement" means the acceptance of a retirement allowance under this chapter upon termination of employment.
- ~~14-~~ 15. "Retirement board" or "board" means the five persons designated by this chapter as the governing authority for the retirement system created.
- ~~15-~~ 16. "Service" means employment on or after July 1, 1966, or, in the case of members of the legislative assembly, service as a member of the legislative assembly on or after July 1, 1989.
- ~~16-~~ 17. "Service benefit" means the credit toward retirement benefits as determined by the retirement board under the provisions of this chapter.

~~17-~~ 18. "Wages" and "salaries" means the actual dollar compensation excluding overtime paid to or for an employee for ~~his~~ the employee's services. For a member of the legislative assembly who is a participating member, "salary" means compensation received by that member of the legislative assembly, exclusive of expense allowances for lodging, travel, and meals, as follows:

- a. Per diem compensation for services received under section 54-03-20, including expense reimbursement for meals received pursuant to an election made under section 54-03-20 to receive that reimbursement in lieu of per diem compensation for services;
- b. Monthly compensation for the execution of public duties received under section 54-03-20, including reimbursement for uncompensated expenses received pursuant to an election made under section 54-03-20 to receive that reimbursement in lieu of monthly compensation; and
- c. Per diem compensation for time spent in attendance at sessions and committees of the legislative council pursuant to section 54-35-10.

* SECTION 4. AMENDMENT. Section 54-52-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-02. Formulation of plan - Exclusion of employees covered by plans in existence. All departments, boards, institutions, commissions, or agencies of the state of North Dakota, the Garrison Diversion Conservancy District, district health units, the legislative assembly, the supreme court, and the district courts, hereinafter referred to as agency, shall participate in a retirement system which will provide for the payment of benefits to state employees and officials, or to their beneficiaries, thereby enabling ~~the~~ those employees and officials to care for themselves and their dependents and which by its provisions will improve and reward state employment and service, reduce excessive personnel turnover, and offer career employment to high-grade men and women. ~~Employees~~ All employees, except members of the legislative assembly, presently covered by a pension plan or retirement plan to which the state is contributing, except social security, ~~shall~~ are not be eligible for duplicate coverage.

SECTION 5. A new section to chapter 54-52 of the North Dakota Century Code is hereby created and enacted to read as follows:

Members of the legislative assembly.

1. Any member of the legislative assembly may, at the member's option, be a participating member of the public employees retirement system, notwithstanding that the member of the legislative assembly is or has been an employee covered by the teachers' fund for retirement or other retirement plan to which the state is contributing or has contributed.
2. Each member of the legislative assembly electing to participate in the public employees retirement system under this section must be assessed both the employee contributions required by subsection 2 of section 54-52-05 and the employer contributions required by

* NOTE: Section 54-52-02 was also amended by section 1 of House Bill No. 1321, chapter 665.

section 54-52-06, based on that legislator's salary as defined by subsection 18 of section 54-52-01. The assessment must be deducted and retained out of the legislator's salary.

3. Any member of the legislative assembly who has been an employee covered by the public employees retirement system or other retirement plan to which the state is contributing is entitled, when qualified, to receive a retirement allowance from each fund provided that no portion of the allowable service credit upon which the retirement allowance from one retirement plan is based is again used in the computation for benefits from another retirement plan. If any member of the legislative assembly has also been an employee covered by the public employees retirement system, that member's service benefit for prior service and service as a member of the legislative assembly must be accounted for separately from the service benefit based on other covered employment.

* SECTION 6. AMENDMENT. Section 54-52-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-17. Formulation of plan. Participating members shall receive benefits according to this section and according to ~~the rules and regulations promulgated adopted~~ by the board, not inconsistent with this chapter. No person ~~shall~~, except a member of the legislative assembly, is entitled to receive a prior service benefit if the person was not continuously employed by a governmental unit in North Dakota for a period of not less than two years immediately prior to eligibility for retirement.

1. Participating members ~~shall~~ are entitled to receive credit for full-time employment or its equivalent, including service and prior service as a member of the legislative assembly, from the date they attain eligibility until their normal retirement date, postponed retirement date, or early retirement date, as defined in this section. Part-time employment will be recognized as full-time employment on a prorated basis as the board may prescribe.
2. ~~Retirement~~ Except for normal retirement benefits based on service or prior service of members of the legislative assembly, retirement benefits ~~shall be~~ are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any sixty consecutive months employed during the last one hundred twenty months of employment. Months not employed or months where employment was not full time ~~shall be~~ are excluded in arriving at the sixty months to be used for the purpose of computing an average. If the participating member has worked for less than sixty months at the normal retirement date, the final average salary ~~shall be~~ is the average salary for the total months of employment.
3. Retirement dates shall be defined as follows:
 - a. Normal retirement date is:
 - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or

* NOTE: Section 54-52-17 was also amended by sections 2, 3, and 4 of House Bill No. 1092, chapter 666; sections 1 and 2 of House Bill No. 1227, chapter 668; section 62 of Senate Bill No. 2056, chapter 69; section 1 of Senate Bill No. 2112, chapter 669; and section 1 of Senate Bill No. 2135, chapter 670.

- (2) When the member has a combined total of years of service credit and years of age equal to ninety and has not received a retirement benefit under this chapter.
 - b. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed ~~his~~ the member's employment after attaining the age of sixty-five years.
 - c. Early retirement date is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed eight years of eligible employment.
 - d. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules ~~and regulations~~ of the board, and has completed at least one hundred eighty days of eligible employment. ~~No A member shall be is not~~ eligible for benefits resulting from a disability unless ~~he~~ the member ~~is also be~~ determined eligible for benefits under the Social Security Act as amended.
4. Retirement benefits ~~shall~~ must be calculated by the board as follows:
 - a. Normal retirement benefits for all retirees, except supreme and district court judges and members of the legislative assembly, reaching normal retirement date ~~shall be is~~ an annual amount, payable monthly, comprised of a service benefit and a prior service benefit, as defined in this chapter, which ~~shall be is~~ determined as follows:
 - (1) Service benefit equals one and one-half percent of final average salary multiplied by the number of years of service employment.
 - (2) Prior service benefit equals one and one-half percent of final average salary multiplied by the number of years of prior service employment.
 - (3) All participants who retired before July 1, 1987, are entitled to benefits calculated at one and one-half percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning July 1, 1987.
 - b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date ~~shall be is~~ an annual amount, payable monthly, comprised of a benefit as defined in this chapter, which ~~shall be is~~ determined as follows:
 - (1) Benefits ~~shall be are~~ calculated from the time of appointment or election to the bench and shall equal three percent of final average salary multiplied by the first ten years of judicial service, two percent of final

average salary multiplied by the second ten years of judicial service, and one percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.

- (2) Service benefits shall include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
- c. Normal retirement benefits for members of the legislative assembly under the public employees retirement system reaching normal retirement date is a monthly amount equal to twenty-five dollars multiplied by the number of years of the member's service and prior service credit, prorated for fractions of a year.
- d. Postponed retirement benefits shall be are calculated as for normal retirement benefits for those members who retired on or after July 1, 1977.
- ~~d.~~ e. Early retirement benefits shall be are calculated as for normal retirement benefits accrued to the date of termination of employment, but ~~shall~~ must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date. A retiree is eligible for early retirement benefits only after having completed eight years of eligible employment.
- ~~e.~~ f. Disability retirement benefits shall be are calculated at sixty percent of the member's final average salary, reduced by the member's primary benefits under the Social Security Act as amended, and by any ~~workmen's~~ workers' compensation benefits paid. However, disability retirement benefits for members of the legislative assembly are calculated as for normal retirement benefits accrued to the disability retirement date.
5. Upon termination of employment after completing eight years of eligible employment but before normal retirement date, a member who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits payable commencing on the member's normal retirement date equal to one hundred percent of the member's accrued normal retirement benefits.
6. If before retiring a member dies after completing eight years of eligible employment, the board shall pay the member's account balance to any beneficiary designated by the member with the written consent of the member's spouse, if any. If the member has not designated any beneficiary under this section, the surviving spouse of the member may select one of the following optional forms of payment:
- a. A lump sum payment of the member's retirement account as of the date of death.
- b. Payments for sixty months as calculated for the deceased member as if the member was age sixty-five at the date of death.

- c. Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued normal retirement benefits until the spouse dies.
7. If a member not coming under the provisions of subsection 6 terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, ~~he the member or his the member's~~ designated beneficiary ~~shall be~~ is entitled to the member's account balance at termination.
8. If a member who is receiving retirement benefits or ~~his the member's~~ surviving spouse who is receiving retirement benefits dies before the total amount of benefits paid to either or both equals the amount of the member's account balance at retirement, the difference ~~shall~~ must be paid to such spouse, the member's surviving beneficiary, if any, or the member's estate.
9. The board shall promulgate regulations providing for the receipt of retirement benefits in the following optional forms:
- a. Joint and survivor, with fifty percent or one hundred percent options.
 - b. Level social security option, which shall be available only to early retirees.
 - c. Life with five-year or ten-year certain options.

Unless a member requests that ~~he the member~~ receive benefits according to one of these options at the time of applying for retirement, all retirement benefits ~~shall~~ must be in the form of a lifetime monthly pension.

* SECTION 7. AMENDMENT. Section 54-52-17.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-17.2. Multiple plan membership - Eligibility for benefits - Amount of benefits.

1. a. For the purpose of determining eligibility for benefits under this chapter, except when determining eligibility for benefits for members of the legislative assembly, an employee's years of service employment is the total of the years of service employment earned in the public employees retirement system and the years of service credit earned in any number of the following:
- (1) The teachers' fund for retirement.
 - (2) The highway patrolmen's retirement system.
- b. If an employee, except a member of the legislative assembly, terminates eligible employment under the system, if that employee has not received a refund of the employee's account balance, and if the employee begins eligible employment in a

* NOTE: Section 54-52-17.2 was also amended by section 1 of Senate Bill No. 2127, chapter 671.

plan described in paragraph 1 or 2 of subdivision a, that employee may elect to remain an inactive member of the system without refund of the employee's account balance. The election must be made within ninety days after beginning the eligible employment ~~or by October 1, 1987, whichever is later~~. The board shall terminate the inactive status of an employee under this subdivision if the employee gains eligible employment under this chapter or if the employee terminates eligible employment under a plan described in paragraph 1 or 2 of subdivision a.

- c. An employee, except a member of the legislative assembly, who has service credit in the system and in any number of the plans described in paragraphs 1 and 2 of subdivision a is entitled to benefits under this chapter calculated by using the certified salaries of the retirement plan of last membership. The board shall calculate benefits for an employee under this subsection by using only those years of service employment earned under this chapter.
2. If an employee, who is a participating member, except a member of the legislative assembly, is also employed in any position where membership in the teachers' fund for retirement is required, then for purposes of current employment the employee is a member of the retirement system in which the employee has the most years of service employment. If the employee has an equal amount of service in both the public employees retirement system and the teachers' fund for retirement, the employee is a member of the public employees retirement system. The board of trustees of the teachers' fund for retirement and the state retirement board shall jointly certify to the appropriate employers of the employee the fact of the beginning and termination of eligibility for dual membership in the respective retirement systems and the retirement system to which the employee is required to be a member under this subsection. The employers upon receipt of this certification shall pay over to that retirement system the member assessments and employer contributions at the rates currently existing for that retirement system. If the employee is required to be a member of the teachers' fund for retirement, the board, at the employee's election, shall designate the employee an inactive member of the public employees retirement system until the employee ceases the employment which requires membership in both the public employees retirement system and the teachers' fund for retirement.
3. Under rules adopted by the board, an individual, except a member of the legislative assembly, whose service credit was canceled when that individual received a refund of assessments at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 1 or 2 of subdivision a of subsection 1, repurchase that service credit that was canceled.

SECTION 8. REPEAL. Section 39-03.1-08.1 of the North Dakota Century Code, and sections 18-11-15.1, 40-45-10.1, 40-46-09.2, and 54-52-17.3 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 224

HOUSE BILL NO. 1096
(Committee on Education)
(At the request of the Teachers' Fund for Retirement)

TFFR BENEFITS IN DOMESTIC RELATIONS ORDERS

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to the payment of retirement benefits in accordance with domestic relations orders under the teachers' fund for retirement; and to amend and reenact sections 28-22-03.1 and 28-22-19 of the North Dakota Century Code, relating to property exempt from judicial process.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-39.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Benefit payments to alternate payee under domestic relations order.

1. The board shall pay retirement benefits in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to it to determine if the domestic relations order is qualified under this section and under rules established by the board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders. Upon determination that a domestic relations order is qualified, the board shall notify the teacher and the named alternate payee of its receipt of the qualified domestic relations order.
2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of the teacher, which is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of the benefits payable to the teacher. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise provided under the fund, or to provide increased benefits as determined on the basis of actuarial value. However, a qualified domestic relations order may require the payment of benefits at the early retirement date notwithstanding that the teacher has not terminated eligible employment. A qualified domestic relations order must specify:

- a. The name and last known mailing address of the teacher and the name and mailing address of each alternate payee covered by the order;
- b. The amount or percentage of the teacher's benefits to be paid by the board to each alternate payee;
- c. The number of payments or period to which the order applies; and
- d. Each retirement plan to which the order applies.

* SECTION 2. AMENDMENT. Section 28-22-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-03.1. Additional absolute exemptions for residents. In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars.
2. A motor vehicle exemption not to exceed one thousand two hundred dollars.
3. Pensions; annuity policies or plans; life insurance policies which, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support and which have been in effect for a period of at least one year; individual retirement accounts; Keogh plans and simplified employee pension plans; and all other plans qualified under section 401 of the Internal Revenue Code [Pub. L. 83-591; 68A Stat. 134; 26 U.S.C. 401] and section 408 of the Internal Revenue Code [Pub. L. 93-406; 88 Stat. 959; 26 U.S.C. 408], and proceeds, surrender values, payments, and withdrawals from such pensions, policies, plans, and accounts, up to one hundred thousand dollars for each pension, policy, plan, and account with an aggregate limitation of two hundred thousand dollars for all pensions, policies, plans, and accounts. The dollar limit does not apply to the extent this property is reasonably necessary for the support of the resident and that resident's dependents, except that the pensions, policies, plans, and accounts or proceeds, surrender values, payments, and withdrawals are not exempt from enforcement of any order to pay spousal support or child support, or a qualified domestic relations order under section 1 of this Act. As used in this subsection, "reasonably necessary for the support" means required to meet present and future needs, as determined by the court after consideration of the resident's responsibilities and all the present and anticipated property and income of the resident, including that which is exempt.

4. The debtor's right to receive, or property that is traceable to:

* NOTE: Section 28-22-03.1 was also amended by section 1 of Senate Bill No. 2228, chapter 392.

- a. A payment, not to exceed seven thousand five hundred dollars, on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
- b. A payment, not to exceed seven thousand five hundred dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
- c. A social security benefit, except that the benefit is not exempt for enforcement of any order for the support of a dependent child.
- d. Veteran's disability pension benefits, not including military retirement pay, except that the benefits are not exempt from process levy or sale for enforcement of any order for the support of a dependent child.

* SECTION 3. AMENDMENT. Section 28-22-19 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-19. Exemptions from legal process - Public pensions, assistance, and awards. The following amounts are exempt from liability for debts of the person to or on account of whom the amounts are paid, and are not subject to seizure upon execution or other process:

1. All pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by section 1 of this Act, a state agency, a political subdivision of the state, or a firemen's relief association for retirement, annuity, pension, disability benefit, or death benefit purposes.
2. All awards made pursuant to chapter 65-13 as reparations for victims of crimes.
3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.

Approved March 9, 1989
Filed March 9, 1989

* NOTE: Section 28-22-19 was also amended by section 2 of Senate Bill No. 2228, chapter 392.

CHAPTER 225

SENATE BILL NO. 2278
(Senators Holmberg, Heinrich)
(Representatives Gates, L. Hanson)

TFFR WITHDRAWAL AND RETURN

AN ACT to amend and reenact section 15-39.1-15 of the North Dakota Century Code, relating to withdrawal from the teachers' fund for retirement and return to teaching by a previously withdrawn teacher.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-39.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-15. Withdrawal from fund - Return to teaching. Any teacher who has withdrawn from the fund as set forth in this chapter may, by returning to teach one full school year in a public school or state institution of this state, regain credit for prior teaching by repaying to the fund, with interest, the amount which was returned to him on withdrawal within five years of initial eligibility or by July 1, 1986, whichever is later making the required payment. The required payment, if made within five years of initial eligibility, is the amount that was returned to the teacher on withdrawal with interest. In all other cases, the purchase cost must be on an actuarial equivalent basis.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 226

SENATE BILL NO. 2156
(Senators Nelson, Lodoen, Satrom)
(Representative Belter)

TFFR OPTIONAL BENEFITS

AN ACT to amend and reenact section 15-39.1-16 of the North Dakota Century Code, relating to optional forms of retirement benefits under the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-39.1-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-16. Option of teachers eligible to receive annuities. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:

Option one. Upon the death of the teacher, the reduced retirement allowance ~~shall~~ must be continued throughout the life of, and paid to, the person as the teacher has nominated by written designation filed with the board at the time of retirement. If the person designated to receive the teacher's reduced retirement allowance predeceases the teacher, the reduced retirement allowance must be converted to a single life retirement annuity under which benefit payments, if the person designated died prior to July 1, 1989, must begin on July 1, 1989, or, if the person designated dies on or after July 1, 1989, must begin on the first day of the month following the death of the person designated.

Option two. Upon the death of the teacher, one-half of the reduced retirement allowance ~~shall~~ must be continued throughout the life of, and paid to, the person as the teacher has nominated by written designation filed with the board at the time of retirement. If the person designated to receive the teacher's reduced retirement allowance predeceases the teacher, the reduced retirement allowance must be converted to a single life retirement annuity under which benefit payments, if the person designated died prior to July 1, 1989, must begin on July 1, 1989, or, if the designated beneficiary dies on or after July 1, 1989, must begin on the first day of the month following the death of the person designated.

Option three. Upon the death of the teacher within five years of the commencement of annuity payments, the payments ~~shall~~ must be continued for the remainder of the five-year period to the

* NOTE: Section 15-39.1-16 was also amended by section 3 of House Bill No. 1094, chapter 222.

person as the teacher has nominated by written designation filed with the board at the time of retirement.

Option four. Upon the death of the teacher within ten years of the commencement of annuity payments, the payments ~~shall~~ must be continued for the remainder of the ten-year period to the person as the teacher has nominated by written designation filed with the board at the time of retirement.

Option five. Level retirement income with social security option, which is available to teachers retiring before social security is payable.

The amount of the reduced retirement allowance payable upon the exercise of any of these options ~~shall~~ must be computed upon an actuarial basis through the use of standard actuarial tables and based upon the ages of the teacher and the teacher's designated beneficiary.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 227

HOUSE BILL NO. 1095
(Committee on Education)
(At the request of the Teachers' Fund for Retirement)

TFFR OUT-OF-STATE CREDIT

AN ACT to amend and reenact subsection 1 of section 15-39.1-24 of the North Dakota Century Code, relating to the purchase of service credit for out-of-state teaching under the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 15-39.1-24 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any teacher ~~who comes from a~~ may purchase service credit for years of teaching service at an out-of-state school or educational institution supported by public taxation out of North Dakota ~~and who becomes a teacher within the meaning of this chapter, by teaching one full school year in North Dakota following the out-of-state teaching, may elect to have no more than ten years of out-of-state teaching credited hereunder, except that any such.~~ However, a teacher must complete five years of creditable service in this state before the teacher is eligible to purchase the first five years of service credit for out-of-state teaching under this subsection. The teacher may purchase any part of the remaining years of service credit for out-of-state teaching with each year of service credit conditional upon the teacher completing one additional year of creditable service in this state following the out-of-state teaching. The years of out-of-state teaching ~~shall not be eligible~~ service do not qualify for credit in North Dakota this state if the years claimed also qualify for retirement benefits from a ~~an out-of-state retirement system out of state.~~

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 228

HOUSE BILL NO. 1103
(Committee on Education)

(At the request of the Teachers' Fund for Retirement)

TFFR LEGISLATORS' SERVICE CREDIT

AN ACT to amend and reenact subsection 5 of section 15-39.1-24 of the North Dakota Century Code, relating to the purchase of additional service credit under the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 15-39.1-24 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. A teacher may purchase service credit for the time during each legislative session spent serving as a member of the legislative assembly while holding eligible employment under this chapter. Service credit for a legislative session must be purchased within one year after the adjournment of that legislative session. As an alternative to a teacher purchasing service credit under this subsection, a teacher and the governmental body employing the teacher may enter into an agreement by which payment for service credit for time spent during each legislative session by the teacher serving as a member of the legislative assembly is made pursuant to section 15-39.1-09. The agreement must provide that contributions made pursuant to section 15-39.1-09 are calculated based on the teacher's annual salary without reduction for a leave of absence taken by the teacher during the legislative session.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 229

SENATE BILL NO. 2277
(Senators Holmberg, Heinrich)
(Representatives Gates, L. Hanson)

TFFR SERVICE CREDIT ACQUISITION

AN ACT to amend and reenact subsection 7 of section 15-39.1-24 of the North Dakota Century Code, relating to purchase of service credit under the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 15-39.1-24 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. Except as provided in subsection 5, the amount of additional service eligible to be purchased under this section must be credited to the teacher when the teacher has made the required payment **within five years of initial eligibility**. In all cases, the purchase cost must be on an actuarial equivalent basis.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 230

HOUSE BILL NO. 1472

(Representatives Dalrymple, Gates, Solberg)
(Senators Dotzenrod, Peterson, D. Meyer)

FOUNDATION AID FOR NONACCREDITED SCHOOLS

AN ACT to amend and reenact subsection 2 of section 15-40.1-06 of the North Dakota Century Code, relating to deductions in foundation aid payments for schools that are not accredited.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 2 of section 15-40.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. a. The educational support per pupil during the first year of the 1987-89 biennium shall be one thousand four hundred dollars and for the second year of the biennium the educational support per pupil shall be one thousand four hundred twelve dollars and shall be the basis for calculating grants-in-aid on a per-pupil basis as provided in sections 15-40.1-07 and 15-40.1-08.
- b. School districts operating high schools not meeting the minimum curriculum as provided in section 15-41-24 or the teacher qualifications in section 15-41-25 shall be supported in the amount of two hundred twenty dollars, which shall be the basis for calculating grants-in-aid on a per-pupil basis as provided in section 15-40.1-07.
- c. School districts operating high schools that are not accredited pursuant to the accreditation standards adopted by the superintendent of public instruction on July 1, 1991, or that become unaccredited in any succeeding school year must be supported for the 1991-92 school year or for the first year that they become unaccredited in the amount of the educational support per pupil established in subdivision a, which is the basis for calculating grants-in-aid on a per-pupil basis as provided in section 15-40.1-07, but those school districts are not entitled to the amounts resulting from applying the factors in that section. The amount of aid a school district is entitled to under this subsection for each high school that is not accredited must be reduced by two hundred dollars times the number of pupils in the school for the second school year that the high school is unaccredited, and an additional two hundred dollars per pupil in the unaccredited school for each additional year the school remains unaccredited. Any high school that becomes accredited is entitled to the per-pupil payments provided for in section 15-40.1-07 for the entire school year in which the school becomes accredited.

Approved March 29, 1989
Filed March 30, 1989

* NOTE: Subsection 2 of section 15-40.1-06 was also amended by section 2 of House Bill No. 1637, chapter 213.

CHAPTER 231

HOUSE BILL NO. 1614
(Stofferahn, B. Anderson)

SCHOOL DISTRICT INTERIM FUNDS AND FOUNDATION AID

AN ACT to amend and reenact subsection 3 of section 15-40.1-06, sections 15-40.1-07, 15-40.1-08, subsection 1 of section 15-40.2-03, and section 57-15-27 of the North Dakota Century Code, relating to school district interim funds and deductions from foundation aid payments; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 3 of section 15-40.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. In determining the amount of payment due school districts for per-pupil aid under this section, the following amounts must be subtracted from the amount of such aid:

a. The product of twenty mills times the latest available net assessed and equalized valuation of property of the school district shall be subtracted from the amount of such aid.

b. The amount that the unobligated balance of a school district's interim fund on the preceding June thirtieth is in excess of the amount authorized by section 57-15-27.

** SECTION 2. AMENDMENT. Section 15-40.1-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-07. High school per-pupil payments - Amount - Proportionate payments. There must be paid each year from state funds to all school districts of the county operating high schools and to school districts contracting to educate high school pupils in a federal school, subject to adjustment as provided in section 15-40.1-09, payments as follows:

1. For high schools having under seventy-five pupils in average daily membership, the amount of money resulting from multiplying the factor 1.70 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.
2. For high schools having seventy-five or more, but less than one hundred fifty pupils in average daily membership, the amount of money resulting from multiplying the factor 1.40 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.

* NOTE: Subsection 3 of section 15-40.1-06 was also amended by section 2 of House Bill No. 1637, chapter 213.

** NOTE: Section 15-40.1-07 was also amended by section 1 of House Bill No. 1232, chapter 232, and section 3 of House Bill No. 1637, chapter 213.

3. For high schools having one hundred fifty or more, but less than five hundred fifty pupils in average daily membership, the amount of money resulting from multiplying the factor 1.32 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.
4. For high schools having a total high school enrollment of five hundred fifty or more pupils in average daily membership, the amount of money resulting from multiplying the factor 1.20 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.

Every high school district shall receive at least as much in total payments as it would have received if it had the highest number of pupils in the next lower category. However, no payment shall be made for those pupils for whom federal agencies provide education. Such payments shall not be made unless four or more units of standard high school work approved by the superintendent of public instruction are offered during the current year, only certificated teachers have been employed, and the other standards prescribed by this chapter have been met. Payments shall be made to the high school district in which the student is enrolled for graduation and units of approved vocational education in accordance with the provisions of chapter 15-20.1, and other courses approved by the superintendent of public instruction, earned in another high school district shall be included to meet the minimum four required units. In the case of students enrolled in nonpublic schools for graduation or students enrolled in less than four units of standard high school work who are in their fourth year of high school coursework and who are enrolled in approved alternative high school curriculum programs, proportionate payments shall be made to the public school district in which such student is enrolled for specific courses. School districts offering high school summer school programs shall be eligible for proportionate payments provided each course offered in such programs satisfies requirements for graduation, comprises at least as many clock hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction. The superintendent may adopt rules regarding eligibility for school districts to receive proportionate payments for such summer education programs.

Districts that did not maintain high schools during the year of 1964-1965 shall not be eligible for payments unless they have a minimum enrollment of twenty-five pupils if four years of high school work are offered, a minimum enrollment of twenty pupils if three years of high school work are offered, a minimum enrollment of fifteen pupils if two years of high school work are offered, and a minimum enrollment of ten pupils if one year of high school work is offered. Payments pursuant to this chapter to school districts in bordering states shall be made after subtracting the amount realized from a twenty-mill levy amounts provided for in subsection 3 of section 15-40.1-06 in the sending school district divided by the total number of resident pupils enrolled in the school district plus the number of resident pupils from the district attending school in another state.

SECTION 3. AMENDMENT. Section 15-40.1-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-08. Elementary per-pupil payments - Amount. There must be paid from state funds to school districts of the county operating elementary

schools and to school districts contracting to educate elementary pupils in a federal school, employing teachers holding valid certificates or permits in accordance with section 15-47-46 and chapter 15-36, payments based on the number of registered students at the beginning of each school year, adjusted as provided in section 15-40.1-09, as follows:

1. For one-room rural schools there must be paid that amount of money resulting from multiplying the factor 1.30 times the educational support per pupil as provided in section 15-40.1-06 for each of the first sixteen pupils in grades one through eight in average daily membership, and for each additional pupil in grades one through eight in average daily membership there shall be paid .9 times the educational support per pupil as provided in section 15-40.1-06, except that no payment may be made for more than twenty pupils in average daily membership.
2. For elementary schools having under one hundred pupils in average daily membership there must be paid that amount of money resulting from multiplying the factor 1.0 times the educational support per pupil as provided in section 15-40.1-06 for each of the first twenty pupils in grades one through six in average daily membership in each classroom or for each teacher and for each additional pupil in grades one through six in average daily membership in each classroom or for each teacher there shall be paid .9 times the educational support per pupil as provided in section 15-40.1-06, except that no payment may be made for more than twenty-five pupils in average daily membership in each classroom or for each teacher.
3. For elementary schools having one hundred or more pupils in average daily membership, and provided the districts in which such schools are located have an average daily membership of less than one thousand elementary pupils, there must be paid that amount of money resulting from multiplying the factor .9 times the educational support per pupil as provided in section 15-40.1-06 for each of the first thirty pupils in grades one through six in average daily membership in each classroom or for each teacher, except that no payment may be made for more than thirty pupils in average daily membership in each classroom or for each teacher.
4. For elementary schools in school districts having an average daily membership of one thousand or more elementary pupils, there must be paid that amount of money resulting from multiplying the factor .95 times the educational support per pupil as provided in section 15-40.1-06 for each of the first thirty pupils in grades one through six in average daily membership in each classroom or for each teacher, except that no payment may be made for more than thirty pupils in average daily membership in each classroom or for each teacher.
5. For each of the above classes of elementary schools, except for one-room rural schools, there must be paid that amount of money resulting from multiplying the factor 1.0 times the educational support per pupil as provided in section 15-40.1-06 for each of the first thirty pupils in grades seven and eight in average daily membership in each classroom or for each teacher, except that no payment may be made for more than thirty pupils in average daily membership in each classroom or for each teacher.

6. For elementary schools having pupils under the compulsory age for school attendance, but not less than three years of age, in a special education program approved by the director of special education, there must be paid that amount of money resulting from multiplying the factor .49 times the educational support per pupil as provided in section 15-40.1-06 for each special education pupil under the compulsory age for school attendance in average daily membership in each classroom or for each teacher.
7. For elementary schools providing kindergartens which are established according to provisions of section 15-45-01, and for out-of-state kindergarten programs, approved by the state superintendent and utilized by North Dakota school districts bordering other states, there must be paid that amount of money resulting from multiplying the factor .50 times the educational support per-pupil payment for that elementary school as determined under this section for each of the first twenty-five pupils in average daily membership in each classroom or for each teacher, except that no payment may be made for more than twenty-five pupils in average daily membership in each classroom or for each teacher. The full per-pupil payment shall be made only to those kindergarten programs providing the equivalent of ninety full days of classroom instruction during any twelve-month period. Programs providing shorter periods of instruction during the same time period shall receive a proportionately smaller per-pupil payment.

Every school district shall receive at least as much in total payments for elementary pupils as it would have received if it had the highest number of pupils in the next lower category. Payments pursuant to this chapter to school districts in bordering states shall be made after subtracting the amount realized from a twenty-mill levy amounts provided for in subsection 3 of section 15-40.1-06 in the sending school district divided by the total number of resident pupils enrolled in the school district plus the number of resident pupils from the district attending school in another state.

* SECTION 4. AMENDMENT. Subsection 1 of section 15-40.2-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Such payments as are received for him the pupil from state payments received by the admitting district, less the average amount per North Dakota resident pupil enrolled in the school district realized from a twenty-mill school district levy the amounts provided for in subsection 3 of section 15-40.1-06; and

SECTION 5. AMENDMENT. Section 57-15-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-27. Interim fund. The governing body of any county, city, school district, park district, or other municipality authorized to levy taxes, may include in its budget an item to be known as the "interim fund" which shall be carried over to the next ensuing fiscal year to meet the cash requirements of all funds or purposes to which the credit of the municipality may be legally extended, for that portion of such fiscal year prior to the receipt of taxes therein. In no case shall such interim fund be in excess of the amount reasonably required to finance the municipality for the first nine months of the next ensuing fiscal year. Such interim fund shall not be in

* NOTE: Section 15-40.2-03 was also amended by section 1 of House Bill No. 1400, chapter 234, and section 6 of House Bill No. 1637, chapter 213.

excess of three-fourths of the current annual appropriation for all purposes other than debt retirement purposes and appropriations financed from bond sources and, for school districts, an additional twenty thousand dollars.

SECTION 6. EFFECTIVE DATE. This Act becomes effective on June 30, 1991.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 232

HOUSE BILL NO. 1232
(Representatives Wilkie, P. DeMers, O'Shea)
(Senators Richard, Freborg, Krauter)

FOUNDATION AID FOR FEDERAL AGENCY STUDENTS

AN ACT to amend and reenact section 15-40.1-07 of the North Dakota Century Code, relating to foundation aid payments for pupils educated by federal agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-40.1-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-07. High school per-pupil payments - Amount - Proportionate payments. There must be paid each year from state funds to all school districts ~~of the county~~ operating high schools and to school districts contracting to educate high school pupils in a federal school, subject to adjustment as provided in section 15-40.1-09, payments as follows:

1. For high schools having under seventy-five pupils in average daily membership, the amount of money resulting from multiplying the factor 1.70 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.
2. For high schools having seventy-five or more, but less than one hundred fifty pupils in average daily membership, the amount of money resulting from multiplying the factor 1.40 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.
3. For high schools having one hundred fifty or more, but less than five hundred fifty pupils in average daily membership, the amount of money resulting from multiplying the factor 1.32 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.
4. For high schools having a total high school enrollment of five hundred fifty or more pupils in average daily membership, the amount of money resulting from multiplying the factor 1.20 times the educational support per pupil as provided in section 15-40.1-06 for each high school pupil registered in the schools each year.

Every high school district ~~shall~~ must receive at least as much in total payments as it would have received if it had the highest number of pupils in the next lower category. ~~However, no payment shall be made for those pupils for whom federal agencies provide education.~~ Such payments ~~shall~~ may not be

* NOTE: Section 15-40.1-07 was also amended by section 2 of House Bill No. 1614, chapter 231, and section 3 of House Bill No. 1637, chapter 213.

made unless four or more units of standard high school work approved by the superintendent of public instruction are offered during the current year, only certificated teachers have been employed, and the other standards prescribed by this chapter have been met. Payments ~~shall~~ must be made to the high school district in which the student is enrolled for graduation and units of approved vocational education in accordance with the provisions of chapter 15-20.1, and other courses approved by the superintendent of public instruction, earned in another high school district ~~shall~~ must be included to meet the minimum four required units. In the case of students enrolled in nonpublic schools for graduation or students enrolled in less than four units of standard high school work who are in their fourth year of high school coursework and who are enrolled in approved alternative high school curriculum programs, proportionate payments shall be made to the public school district in which such student is enrolled for specific courses. School districts offering high school summer school programs ~~shall~~ must be eligible for proportionate payments provided each course offered in such programs satisfies requirements for graduation, comprises at least as many clock hours as courses offered during the regular school term, and complies with rules adopted by the superintendent of public instruction. The superintendent may adopt rules regarding eligibility for school districts to receive proportionate payments for such summer education programs.

Districts that did not maintain high schools during the year of 1964-1965 ~~shall~~ are not ~~be~~ eligible for payments unless they have a minimum enrollment of twenty-five pupils if four years of high school work are offered, a minimum enrollment of twenty pupils if three years of high school work are offered, a minimum enrollment of fifteen pupils if two years of high school work are offered, and a minimum enrollment of ten pupils if one year of high school work is offered. Payments pursuant to this chapter to school districts in bordering states ~~shall~~ must be made after subtracting the amount realized from a twenty-mill levy in the sending school district divided by the total number of resident pupils enrolled in the school district plus the number of resident pupils from the district attending school in another state.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 233

SENATE BILL NO. 2037
(Legislative Council)
(Interim Education Finance Committee)

SPECIAL EDUCATION COST SHARING

AN ACT to create and enact a new section to chapter 15-59 and a new subsection to section 15-59.2-05 of the North Dakota Century Code, relating to school district liability for the cost of special education and coordination of special education transportation; to amend and reenact sections 15-40.1-16.1, 15-40.2-08.1, 15-59-02.1, and 15-59-06 of the North Dakota Century Code, relating to state aid for special education; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-40.1-16.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.1-16.1. Transportation aid for certain vocational education and special education programs. There shall be paid from state funds to each school district an amount for transporting pupils to and from schools in other districts and to and from schools within school districts for vocational education courses offered through cooperative arrangements approved by the state board of vocational education. ~~Similar payments shall be paid to the school districts transporting pupils for special education programs approved by the superintendent of public instruction.~~ Such amount shall be the same amount for mileage and per day as is provided in subsection 1 of section 15-40.1-16, ~~except that school.~~ Payments must be made to school districts transporting pupils for special education programs approved by the superintendent of public instruction as follows:

1. School districts transporting nine or fewer pupils per vehicle are entitled to the payment provided in section 15-40.1-16 for vehicles having a capacity of nine or fewer pupils.
2. School districts transporting ten or more pupils per vehicle are entitled to the payment provided for in section 15-40.1-16 for schoolbuses having a capacity of ten or more pupils.

School districts entitled to transportation aid pursuant to this section shall receive such aid for all miles [kilometers] traveled and for all pupils transported, regardless of whether or not such pupils live within the incorporated limits of cities in which the schools in which they are enrolled are located. Provided, however, that no school district shall receive more than one per-pupil payment for transportation regardless of the number of times any pupil is transported in any one day.

SECTION 2. AMENDMENT. Section 15-40.2-08.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.2-08.1. Payment of tuition in cases of handicapped children placed for purposes other than education.

1. The payment of tuition in cases of handicapped children placed outside their school districts of residence pursuant to subdivisions a through c for purposes other than education must be made by the school district of residence and by the state in the proportions set forth in ~~subsection~~ subsections 2 and 3. For purposes of applying this section, the school district in which a child resides must be construed to be the district of residence of such child:
 - a. When the placement is made for any prescribed period of time by a county or state social service agency or a regional human service center at a state-licensed child care home or agency;
 - b. When the placement is made from a state-operated institution; or
 - c. When the placement is made pursuant to an order of any state court, tribal court, or a juvenile supervisor which requires a child to stay for any prescribed period of time at a state-licensed child care home or agency.
2. For the biennium beginning July 1, 1987, and ending June 30, 1989, the school district of residence is liable to pay the admitting district as part of the cost of educating the student an amount for the school year equal to two and one-half times the state average per-pupil elementary or high school cost, depending on whether the enrollment would be in a grade or high school department; provided, that such payment may not exceed the actual per-pupil cost incurred by the admitting district. The remainder of the actual cost of educating the student not covered by other payments or credits must be paid from funds provided to the department of public instruction by the legislative assembly for special education.
3. For succeeding bienniums the school district of residence is liable to pay the admitting district as part of the cost of educating the student an amount for the school year equal to the state average per-pupil elementary or high school cost, depending on whether the enrollment is in a grade or high school department, provided that the payment may not exceed the actual per-pupil cost incurred by the admitting district. The remainder of the actual cost of educating the handicapped student not covered by other payments or credits must be made as follows:
 - a. For the biennium beginning July 1, 1989, and ending June 30, 1991, the school district of residence is liable for ~~sixty~~ twenty percent of the cost and the state is liable for ~~forty~~ eighty percent of the cost.
 - b. ~~For the biennium beginning July 1, 1991, and ending June 30, 1993, the school district of residence is liable for forty~~

percent of the cost and the state is liable for sixty percent of the cost.

~~c. For the biennium beginning July 1, 1993, and ending June 30, 1995, the school district of residence is liable for twenty percent of the cost and the state is liable for eighty percent of the cost.~~

~~d. After June 30, 1995 1991, the state is liable for one hundred percent of the cost.~~

4. The state and the school district of residence are liable for tuition and the actual cost of educating the student not covered by other payments or credits upon claim of the admitting school district; provided, that the state, the district of residence, and the admitting school district are notified of the placement by the placement agency, institution, or court at the time the same is ordered. Notification must be made by the placement agency.
5. If the handicapped student does not have a parent residing in North Dakota, or if parental rights have been terminated, the state shall pay the actual cost of educating the handicapped student from funds appropriated by the legislative assembly for the foundation aid program. If the handicapped student has reached the age of majority and continues to receive special education and related services from a public school district, the district of residence of the student remains the same as the student's parent or parents until the special education services are concluded.
6. In the event of a voluntary admission to any state-licensed child care home or agency, the determination of tuition may be subject to an appeal filed with the county superintendent of schools. The three-member committee referred to in section 15-40.2-05, shall within fifteen days consult with the school boards of the districts concerned and with the parent or guardian of the pupil concerned and render a decision in regard to the tuition charges. Those provisions of section 15-40.2-05 relating to multicounty districts, notification of unpaid tuition, and withholding of state payments apply to this section.

SECTION 3. AMENDMENT. Section 15-59-02.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59-02.1. Legislative intent - Special education. This statement of legislative intent is provided to define more clearly the relationship between the state, school districts, and parents of handicapped children in the provision of special education and related services. "Related services" means transportation and such developmental and corrective or supportive services required to assist a handicapped child to benefit from special education.

The school administrator or his appointed representative or director of special education other than the child's teacher is responsible for bringing together professionals and parents to share assessment information related to all areas of suspected disability, develop an individualized education

program plan for the handicapped student, and make recommendations for required special education and related services.

The legislative assembly believes that in order to assure equality of services which are provided for by limited state funds, the department of public instruction will be required to approve a contract for services based on an individualized education program developed for each handicapped student placed in a private school program or in programs outside the student's original special education unit.

The legislative assembly believes that when money is distributed to a school district for special education personnel, the department of public instruction should give consideration to the units of service provided by the district, the district's special education program costs, and the district's special education program needs. However, no program may be reimbursed at a lesser rate than that of the prior year, notwithstanding locally initiated program changes, within the limits of legislative appropriations.

The legislative assembly recognizes that a handicapped student whose individualized education program so requires is entitled to an educational program in excess of one hundred eighty days per year if regression caused by an interruption in educational programming, together with a student's limited recoupment capacity, renders it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach in view of the handicapping condition. All summer programs attended by these students must have approval of the department of public instruction before receiving foundation aid or state special education reimbursement.

In the case of handicapped students who require boarding care away from the family residence in order to receive special education and related services in an approved program, it is the intent of the legislative assembly that the instructional costs and costs of related services, including boarding care, be borne by state special education funds and school district funds.

"All handicapped children have the right to a free appropriate education" means that all handicapped students have the right to special education and related services which must be provided at no cost to parents. "At no cost" means specifically designed instruction provided without charge but does not preclude expenses normally incurred or charged to parents of nonhandicapped children. Parents will assume such costs for a handicapped child as they would if the child was not handicapped. Personal items, including, but not limited to, hearing aids, eyeglasses, routine medical expenses, physical exams, medications, and all items necessary for a nonhandicapped child, will be the financial responsibility of the parent.

School districts must require use of family insurance, or similar third party payments, in whatever amount is allowed, as long as there is no financial loss to the child or the child's parent, for determining a child's medically related handicapping condition or other required related services which results in the child's need for special education. It is the school district's responsibility to assume costs not covered by the insurer or similar third party in the above situation.

The school district in which a handicapped student resides is responsible to provide transportation for the student as prescribed in the student's individualized education program.

Costs of transportation for the student to attend an approved special education program are the responsibility of the school district with aid from the department of public instruction.

The district of residence may use any reasonably prudent and safe means of transportation at its disposal to carry out the requirements of the individualized education program. Such means may include, but not be limited to, a regularly scheduled schoolbus, public or commercial transportation where appropriate, charter or specially contracted transportation, or transportation provided by a handicapped student's parent or other responsible party at school district expense.

If the transportation between the district of residence and the educational facility is provided by the parents, the reimbursement to the school district from department of public instruction funds must be for mileage costs only and may not include per diem costs for meals, lodging, lost wages, or other costs of any kind.

As the state department of health and consolidated laboratories has authority under chapter 25-16 to provide early intervention services to meet the needs of handicapped children ages zero through two years, the legislative assembly recognizes this provision and requires the department of public instruction, the state department of health and consolidated laboratories, and the department of human services to cooperate in planning and coordinating programs for these children.

SECTION 4. AMENDMENT. Section 15-59-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59-06. State cooperation in special education. Exceptional children who are enrolled in approved programs of special education shall be deemed to be regularly enrolled in the school district of residence and shall be included in the determination of elementary and high school per-pupil payments from the state foundation aid program whether or not such pupils are regularly attending school in the school or school district receiving such payments. A prorated state foundation aid payment for a student to attend a public school program for handicapped students, approved by the superintendent of public instruction, may be made provided that the individualized education program for the child is written during the last quarter of the school term and specifically requires that the child attend a summer special education program. In the case of a student who is enrolled in a nonpublic school but who is attending a public school special education program, payments shall be made to the appropriate public school district in relation to the proportion of a normal schoolday as such student participates in such special education program. For the purposes of this section, a normal schoolday shall be deemed to consist of six hours. Upon the determination by the director of special education that the school district has made expenditures for each exceptional child in such program equal to the average expenditures made in such district for elementary or high school students, as the case may be, the director by vouchers drawn upon funds provided by the legislative assembly for such purpose may provide reimbursement to such school or school district in an amount not exceeding three times the state average per-pupil cost of education computed by the

department of public instruction for the previous school year for such child per year for instruction and four times the state average per-pupil cost of education computed by the department of public instruction for the previous year for such child per year for the cost of related services. The amount the school district is required to expend must be reduced proportionately if a child attends the school for less than an entire year. If any school district within a special education unit has any handicapped elementary or high school student who, in the opinion of a qualified psychologist, a medical doctor, district superintendent, and the district or multidistrict director of special education, is unable to attend the public schools in the special education unit because of a handicapping condition, such school district shall contract with an in-state public school outside the special education unit in which the student is a legal resident which will accept such student and has proper facilities for the education. No school district shall may enter into a contract with any in-state public school for the education of any student because of a handicapping condition, unless the curriculum provided by such school and the contract has been approved in advance by the superintendent of public instruction. The contract shall must provide that such school district agrees to pay to the in-state public school as part of the cost of educating such student an amount for the school year equal to two and one-half times the state average per-pupil elementary or high school cost, depending on whether the enrollment would be in a grade or high school department; provided, that such payment shall may not exceed the actual per-pupil cost incurred by such in-state public school. The school district's liability must be reduced proportionately if the student attends the in-state public school for less than an entire year. The superintendent of public instruction, upon notification by the admitting district and upon verification by the superintendent that tuition payments are due the admitting district and are unpaid, shall withhold all payments from the state for foundation aid to the district of residence until the tuition due has been paid. The transportation shall must be furnished as provided by rules and regulations of the department of public instruction. The remainder of the actual cost of educating the handicapped student not covered by other payments or credits shall must be paid from funds provided by the legislative assembly for such purpose. The department of public instruction may provide reimbursement to such school or school district in an amount not exceeding three times the state average per-pupil cost of education computed by the department of public instruction for the previous school year for such child per year for instruction and four times the state average per-pupil cost of education computed by the department of public instruction for the previous year for such child per year for the cost of related services.

SECTION 5. A new section to chapter 15-59 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cost of special education - Liability of school district. If allowable costs for special education and related services for an exceptional child in a special education program, as determined by the superintendent of public instruction, exceed the reimbursement provided by the state, the school district is liable to pay for each such student an amount over the state reimbursement up to a maximum each school year of two and one-half times the state average per-pupil elementary or high school cost, depending on whether the enrollment would be in a grade or high school department. The two and one-half times amount includes the amount the school district is required to pay in section 15-59-06. The state is liable for one hundred percent of the remainder of the cost of education and related services for each such handicapped student.

SECTION 6. A new subsection to section 15-59.2-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

To plan and coordinate the transportation of pupils for special education programs within the school districts participating in the multidistrict special education program.

SECTION 7. EFFECTIVE DATE. Section 3 of this Act becomes effective on July 1, 1990.

SECTION 8. EXPIRATION DATE. Section 3 of this Act is effective through June 30, 1991, and after that date is ineffective.

Approved April 28, 1989

Filed April 28, 1989

CHAPTER 234

HOUSE BILL NO. 1400
(Hoffner)

ALTERNATIVE EDUCATION PROGRAM TUITION WAIVER

AN ACT to amend and reenact sections 15-40.2-03 and 15-40.2-04 of the North Dakota Century Code, relating to an exemption from tuition payments for students enrolled in approved alternative education programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-40.2-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.2-03. Tuition payments. ~~School~~ Except as provided in section 15-40.2-04, school districts educating pupils in other school districts shall pay the full cost of education. Such costs must be determined on the basis of average daily membership and shall include annual expenditures from the general fund and annual educational expenditures from all special funds; provided, that only those expenditures permitted in determining the educational cost per pupil in section 15-40.1-06 shall be included in determining average current operating expenses. To such average current operating expense in the county for kindergarten, elementary, or high school students, as the case may be, except special education students where a fair rental charge for each student for capital outlay must be determined by the department of public instruction, must be added the statewide total of all school districts' annual expenditures from sinking and interest funds, plus the statewide total of all school districts' annual tax receipts to the building funds, including any amounts expended from school districts' general funds for capital outlay, divided by the average daily membership of the state. From this amount, the following must be deducted for each individual pupil:

1. Such payments as are received for him from state payments received by the admitting district, less the average amount per North Dakota resident pupil enrolled in the school district realized from a twenty-mill school district levy; and
2. A credit applied for any school taxes paid to the admitting district by the parent or guardian of the admitted pupil.

The amount remaining shall be the tuition charge for the individual pupil, and must be paid under this chapter.

The amount calculated for kindergarten students must be one-half of the amount calculated for elementary students.

If the district of residence and the parent or guardian are both paying tuition, the credit allowed under this section for taxes paid to the

* NOTE: Subsection 1 of section 15-40.2-03 was also amended by section 4 of House Bill No. 1614, chapter 231, and section 6 of House Bill No. 1637, chapter 213.

admitting district by the parent or guardian must be credited to the district of residence and the parent or guardian in proportion to the amount of tuition paid by each.

Nothing contained in this chapter shall affect the right of a school district to charge and collect such tuition as may be fixed by agreement from pupils who are not residents of this state, in accordance with section 15-40.2-10.

SECTION 2. AMENDMENT. Section 15-40.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-40.2-04. Nonresident tuition payments mandatory - Payments are exclusive. Any school district that admits nonresident pupils to its schools, as provided by this chapter, shall charge tuition for such pupils except that school districts have the option of charging tuition for nonresident pupils enrolled in an approved alternative education program. The whole amount of ~~such the~~ tuition ~~shall~~ must be paid by the district from which the pupil is admitted, in accordance with section 15-40.2-03, or by ~~his~~ the pupil's parent or guardian, in accordance with section 15-40.2-06.

Any Except as otherwise provided, any school district that fails to sign a tuition agreement and fails to charge and collect tuition for nonresident students shall forfeit foundation payments for those nonresident students for whom tuition is not paid. Be it further provided that a A school district may accept a nonresident student or students without a charge and collection of tuition if a written agreement is made between the sending and receiving districts. No written agreement is necessary if the nonresident student is enrolled in an approved alternative education program for which no tuition is charged.

No school district ~~shall~~ may charge or collect from any nonresident pupil, ~~his~~ parent or guardian of a nonresident pupil, or the district of ~~his~~ the pupil's residence, any registration, textbook, or laboratory fee, or any other fee or charge which is not charged to or for all resident pupils.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 235

HOUSE BILL NO. 1596
(Gerhardt)

CRIMINAL FINE REPORTING

AN ACT to amend and reenact section 15-44-02 of the North Dakota Century Code, relating to reporting of criminal fines proceeds by the county treasurer to the state treasurer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-44-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-44-02. Reports of county treasurer. The county treasurer shall receive from the proper officers the net proceeds of fines for violation of state laws, and all moneys arising from leasing of school lands within the county, and shall forward a detailed statement of moneys so collected, specifying the amount received from each source, to the ~~office of management and budget, at the time of making reports of other moneys to the office of management and budget~~ state treasurer by the fifteenth of each month.

Approved March 30, 1989
Filed March 31, 1989

CHAPTER 236

HOUSE BILL NO. 1389
(Myrdal, Goetz)

SCHOOL DISTRICT ELECTION RECOUNTS

AN ACT to amend and reenact section 15-47-06 of the North Dakota Century Code, relating to recounts in school district elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-47-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-06. Election procedure in all school districts - Canvass of boards - Tie vote - Absent voters - Recounts. An election in a public school district, except as otherwise provided in this title, shall be conducted and the votes shall be canvassed in the manner provided by the laws of this state for the election of county officers. Immediately after the polls are closed, the judges shall proceed to count and canvass the votes for each office and the person receiving the highest number of votes for an office shall be declared elected. If the election results in a tie, the business manager of the district immediately, and in writing, shall notify the candidates between whom the tie exists, and within three days after the election, and at a time agreed upon by said candidates, the election shall be decided in the presence of the judges and clerks of election in a manner agreed upon by said candidates. A record of the proceedings shall be made in the records of the business manager of the district. Returns shall be made to the school board showing the number of votes cast for each person for any office, and such returns shall be signed by the judges and clerks of election and filed with the business manager of the district within two days thereafter. The school board shall canvass all election returns and shall declare the result of any election within three days thereafter, and the result of the election shall be entered upon the records of the board. The person receiving the highest number of votes for each office in the district shall be declared elected. Absent voters' ballots may be used in any school district election in accordance with chapter 16.1-07. Section 16.1-16-01 applies to public school district elections, except the members of the school board not subject to a recount and not disqualified under subdivision c of subsection 2 of section 16.1-05-02 shall perform the duties of the recount board, the school district business manager shall perform the duties of the county auditor, the school board takes the place of the county canvassing board, and all expenses of the recount must be paid as provided in section 15-28-10.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 237

HOUSE BILL NO. 1455
(D. Olsen, R. Berg, Wilkie, Skjerven, Myrdal)

TEACHER CONTRACT NONRENEWAL

AN ACT to amend and reenact section 15-47-26 of the North Dakota Century Code, relating to the definition of teacher for purposes of nonrenewal of contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-47-26 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-26. "Teacher" defined. The term "teacher", as used in sections 15-47-27 and 15-47-28, shall be construed to include all teachers, principals, and superintendents in all public school districts within this state, and all persons employed in teaching in any state institution, except institutions of higher education. The term "teacher", as used in section 15-47-38, shall be construed to include all teachers and principals in all public school districts within this state, and all persons employed in teaching in any state institution, except institutions of higher education. For purposes of the sections above referenced, the term "teacher" shall not include teachers who are replacing teachers on leave of absence or sabbatical leave or, for purposes of nonrenewal, teachers who are in their first year of teaching and teachers who are employed after January first as to that school year. A teacher hired after January first has all the rights provided in section 15-47-27.1 except that only one evaluation is required during that school year.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 238

HOUSE BILL NO. 1347
(Gates)

TEACHER PERFORMANCE EVALUATIONS

AN ACT to amend and reenact section 15-47-27 and subsection 5 of section 15-47-38 of the North Dakota Century Code, relating to performance evaluations of teachers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-47-27 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-27. Time for renewal of teachers' contracts. Any teacher who has been employed by any school district or the director of institutions in this state during any school year, shall be notified in writing by the school board or the director of institutions, as the case may be, not earlier than March first and not later than May first in the school year in which ~~he or she~~ the teacher has been employed to teach, of the determination not to renew the teacher's contract for the ensuing school year, if such determination has been made; and failure to give such written notice on or before said date shall constitute an offer to renew the contract for the ensuing school year under the same terms and conditions as the contract for the then current year. On or before May first in any year and not earlier than March first, all teachers shall be notified of a date, which shall not be less than thirty days after the date of such notice, upon which they will be required to accept or reject proffered reemployment, and failure on the part of the teacher to accept said offer within such time shall be deemed to be a rejection of the offer. Any teacher who shall have accepted the offer of reemployment, either by the action or nonaction of the school board or the director of institutions, on or before May first, as herein provided, shall be entitled to the usual written contract for the ensuing school year, as provided by law and shall notify the school board or the director of institutions in writing of ~~his or her~~ the teacher's acceptance or rejection on or before the date specified or before June first, whichever is earlier. Failure on the part of the teacher to provide such notification shall relieve the school board or the director of institutions of the continuing contract provision of sections 15-47-26 through 15-47-28. Nothing in this section shall be construed as in any manner repealing or limiting the operation of any existing law with reference to the dismissal of teachers for cause. Each district shall have an established system through which two written evaluations are prepared for every teacher employed by the district during for each of the first three school year years the teachers are employed by the school district. These written performance reviews shall be completed and made available to the teacher no later than December fifteenth for the first review and March fifteenth for the second review each year. After three years of employment by a school district, each teacher must be evaluated at least once every school year, and the written performance review

* NOTE: Section 15-47-27 was also amended by section 1 of House Bill No. 1229, chapter 239.

must be completed and made available to the teacher no later than March fifteenth.

SECTION 2. AMENDMENT. Subsection 5 of section 15-47-38 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The school board of any school district contemplating not renewing a teacher's contract, as provided in section 15-47-27, shall notify the teacher in writing of such contemplated nonrenewal no later than April fifteenth. The teacher shall be informed in writing of the time, which shall not be later than April twenty-first, and place of a special school board meeting for the purpose of discussing and acting upon such contemplated nonrenewal. The teacher shall also be informed in writing of the reasons for nonrenewal. The reasons given by the school board for its decision not to renew a teacher's contract must be drawn from specific and documented findings arising from formal reviews conducted by the board with respect to the teacher's overall performance. Each district shall have an established system through which ~~two~~ written evaluations are prepared for every teacher employed by the district ~~during each school year. These written performance reviews shall be completed and made available to the teacher no later than December fifteenth for the first review and March fifteenth for the second review each year as provided in section 15-47-27.~~ The reasons given by the board for not renewing a teacher's contract must be sufficient to justify the contemplated action of the board and may not be frivolous or arbitrary but must be related to the ability, competence, or qualifications of the teacher as a teacher, or the necessities of the district such as lack of funds calling for a reduction in the teaching staff. At the meeting with the board the teacher may then produce such evidence as may be necessary to evaluate the reasons for nonrenewal, and either party may produce witnesses to confirm or refute the reasons. The administrator shall substantiate the reasons with written or oral evidence presented at the meeting. All witnesses are subject to questioning for the purposes of clarification. At the meeting, the board shall discuss the reasons and determine whether or not the administrator has, in fact, substantiated the reasons. If the board finds that the reasons have not been substantiated, the nonrenewal proceedings will be dismissed. The meeting must be an executive session of the board unless both the school board and the teacher agree that it is to be open to other persons or the public. The teacher may be represented at the meeting by any two representatives of his own choosing; and the teacher's spouse, or one other family member of the teacher's choice, may also attend the meeting if the teacher so desires. In addition to board members, the business manager of the school district, and the superintendent, the school board may be represented by two other representatives of its own choosing at such executive session. At the meeting, if the teacher so requests, he shall be granted a continuance of not to exceed seven days. No claim for relief for libel or slander lies for any statement expressed either orally or in writing at any executive session of the school board held for the purposes provided for in this section. The determination not to renew a contract if made in good faith is final and binding on all parties. Final notice of the determination not to renew a contract shall be given in writing by May first as provided in section 15-47-27.

CHAPTER 239

HOUSE BILL NO. 1229
(Representative Ulmer)
(Senator Mushik)

STATE INSTITUTIONS ADMINISTRATION

AN ACT to create and enact a new section to chapter 25-06 and a new section to chapter 25-07 of the North Dakota Century Code, relating to the appointment of the superintendents, budgets, staff, and reporting structure of the school for the blind and the school for the deaf; to amend and reenact sections 15-47-27, 15-47-27.1, and 15-47-34 of the North Dakota Century Code, section 25-04-01 of the North Dakota Century Code as amended by section 1 of chapter 310 of the 1985 Session Laws of North Dakota and section 25-04-01 of the North Dakota Century Code as amended by section 1 of chapter 311 of the 1985 Session Laws of North Dakota, sections 25-06-03, 25-06-04, 25-06-05, 25-07-04, 25-07-05, 54-23-01, 54-24-01, and 54-24-03 of the North Dakota Century Code, relating to the transfer of control of the school for the blind, school for the deaf, and the state library from the director of institutions to the superintendent of public instruction and institutions under the control of the director of institutions and to change the name of the state developmental center at Grafton; to require the governor to develop a plan for the transfer of the powers and duties of the director of institutions; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-47-27 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-27. Time for renewal of teachers' contracts. Any teacher who has been employed by any school district, the department of corrections and rehabilitation, or the director of institutions superintendent of public instruction in this state during any school year, shall must be notified in writing by the school board, the department of corrections and rehabilitation, or the director of institutions superintendent of public instruction, as the case may be, not earlier than March first and not later than May first in the school year in which he or she that teacher has been employed to teach, of the determination not to renew the teacher's contract for the ensuing school year, if such the determination has been made; and failure to give such written notice on or before said that date shall constitute constitutes an offer to renew the contract for the ensuing school year under the same terms and conditions as the contract for the then current year. On or before May first in any year and not earlier than March first, all teachers shall must be notified of a date, which shall must not be less than thirty days after the date of such the notice, upon which they will be required to shall accept or reject proffered reemployment, and failure on the part of by the teacher to accept said the offer within such that time shall be deemed to be is a rejection of the offer. Any teacher who shall have accepted accepting the offer of reemployment, either by the action or

* NOTE: Section 15-47-27 was also amended by section 1 of House Bill No. 1347, chapter 238.

nonaction of the school board, the department of corrections and rehabilitation, or the director of institutions superintendent of public instruction, on or before May first, as herein provided, shall be is entitled to the usual written contract for the ensuing school year, as provided by under law and shall notify the school board, the department of corrections and rehabilitation, or the director of institutions superintendent of public instruction in writing of his or her acceptance or rejection on or before the date specified or before June first, whichever is earlier. Failure on the part of by the teacher to provide such that notification shall relieve relieves the school board, the department of corrections and rehabilitation, or the director of institutions superintendent of public instruction of the continuing contract provision of sections 15-47-26 through 15-47-28. Nothing in this This section shall be construed as in any manner repealing or limiting does not repeal or limit the operation of any existing law with reference to the dismissal of teachers for cause. Each district shall have an established system through which two written evaluations are prepared for every teacher employed by the district during each school year. These written performance reviews shall must be completed and made available to the teacher no later than December fifteenth for the first review and March fifteenth for the second review each year.

* SECTION 2. AMENDMENT. Section 15-47-27.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-27.1. First-year teachers - Evaluation - Renewal and nonrenewal of contracts. Each school district, the department of corrections and rehabilitation, and the director of institutions superintendent of public instruction in this state shall have an established system through which two written evaluations are prepared during each school year for every teacher who is in his or her first year of teaching. The evaluation must be in the form of written performance reviews, and the first review must be completed and made available to first-year teachers no later than December fifteenth and the second review must be completed and made available no later than March fifteenth of each year. If a school board, the department of corrections and rehabilitation, or the director of institutions superintendent of public instruction determines not to renew the contract of a first-year teacher, written notification of the decision of nonrenewal must be given to the teacher no earlier than April fifteenth nor later than May first. Failure by a school board, the department of corrections and rehabilitation, or the director of institutions superintendent of public instruction to provide written notification of nonrenewal to a first-year teacher by May first constitutes an offer to renew the contract of the teacher for the ensuing school year under the same terms and conditions as the contract for the current year. Such The notification of nonrenewal given to a first-year teacher must contain a detailed description of the reason or reasons for the nonrenewal.

SECTION 3. AMENDMENT. Section 15-47-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-34. Education of deaf-blind children. The state director of institutions superintendent of public instruction, after consulting with the superintendents of the school for the blind, the school for the deaf, and the Grafton state school developmental center, shall determine whether those children under the age of twenty-one, who are deaf as well as and blind, should be sent to the school for the blind, the school for the deaf, or the

* NOTE: Section 15-47-27.1 was also amended by section 1 of House Bill No. 1424, chapter 240.

Grafton state school developmental center. If, in his the judgment of the superintendent of public instruction, there are not adequate facilities for the education of such deaf-blind children in this state, the director of institutions is authorized to superintendent of public instruction may determine whether such the deaf-blind children should be sent to any school or institution outside the state of North Dakota providing a qualified program of education for such deaf-blind children.

The director of institutions superintendent of public instruction may pay for the education of such those children in out-of-state institutions within the limitations of legislative appropriations for such that purpose. Such The funds may be spent for room, board, tuition, transportation, and other items which are necessarily relevant to the education of such the children.

In interpreting and carrying out the provisions of this section, the words "deaf-blind child" wherever used, will be construed to include includes any child whose combination of handicaps of deafness and blindness will prevent him the child from profiting satisfactorily from educational programs provided for the blind child or the deaf child.

The director of institutions is hereby authorized to promulgate such superintendent of public instruction may make rules and regulations as he deems necessary and proper for carrying out the purposes and intents of this section.

* SECTION 4. AMENDMENT. Section 25-04-01 of the North Dakota Century Code as amended by section 1 of chapter 310 of the 1985 Session Laws is hereby amended and reenacted to read as follows:

25-04-01. State school Developmental center - Maintained- Name - Administration and control. An institution for the mentally deficient shall A facility for developmentally disabled persons must be maintained at or near the city of Grafton in the county of Walsh County. Such institution shall The facility must be known and designated as the state developmental center at Grafton. There shall be maintained near Dunseith, in the county of Rolette, a division of the state developmental center at Grafton which shall be known as San Haven. The department of human services has administrative authority and control of the developmental center at Grafton.

* SECTION 5. AMENDMENT. Section 25-04-01 of the North Dakota Century Code as amended by section 1 of chapter 311 of the 1985 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

25-04-01. State school Developmental center - Name - Administration and control. An institution for the developmentally disabled shall A facility for developmentally disabled persons must be maintained at or near the city of Grafton in the county of Walsh County. The institution shall facility must be known and designated as Grafton state school the developmental center at Grafton. There shall be maintained near Dunseith, in the county of Rolette, a division of the Grafton state school which shall be known as San Haven. The department of human services shall have has administrative authority and control of Grafton state school and San Haven the developmental center at Grafton.

SECTION 6. A new section to chapter 25-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

* NOTE: Section 25-04-01 was also amended by sections 1 and 2 of House Bill No. 1127, chapter 338.

School for the blind - Appointment of superintendent, budget, staff, and reporting structure. The superintendent of the school for the blind is appointed by and reports to the superintendent of public instruction. The school for the blind must have a separate budget and separate staff from the department of public instruction.

* SECTION 7. AMENDMENT. Section 25-06-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-06-03. Superintendent to possess certain qualifications. The superintendent of the school for the blind ~~shall~~ must possess ~~such those~~ qualifications, educational and otherwise, as in the opinion of the ~~director of institutions will fit him~~ superintendent of public instruction may qualify that person to instruct and minister to the needs of blind persons.

SECTION 8. AMENDMENT. Section 25-06-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-06-04. Qualifications for admission to school for the blind - Residents of state entitled to free education. Applicants for admission to the school for the blind must be blind or partially blind and unable to make suitable progress in the public schools of the state. The superintendent, with the approval of the ~~director~~ superintendent of public instruction, may determine the age required for admission. The superintendent shall furnish application blanks upon request, and no person may be admitted to the institution until the application giving such information as the ~~director may require~~ superintendent of public instruction requires has been returned to and approved by the superintendent of the school for the blind. An applicant admitted to the school for the blind must be furnished transportation by the school as provided in the student's individualized education program at the most economical rate possible, and yet meet the student's needs. Each such applicant who is a resident of this state and who, because of ~~his handicap,~~ blindness and other handicaps is unable to receive an education in the public schools, is entitled to receive an education in the school for the blind at the expense of the state.

SECTION 9. AMENDMENT. Section 25-06-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-06-05. Admission of nonresidents. Blind children of suitable age who are not residents of this state ~~shall be entitled to an education may enroll~~ in the school for the blind upon payment in advance of the cost of ~~such the~~ education as ~~shall be~~ determined by the ~~director of institutions from time to time~~ superintendent of public instruction. Nonresident children, however, ~~shall may~~ not be received to the exclusion of children who are residents of this state.

SECTION 10. AMENDMENT. Section 25-07-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-07-04. Qualifications for admission to school for deaf - Residents of state entitled to free education. ~~In order to~~ To be admitted as a pupil in the school for the deaf, an applicant's hearing must be impaired to such extent that ~~he the applicant~~ cannot make suitable progress in the public schools of the state. The superintendent, with the approval of the ~~director~~ superintendent of public instruction, may determine the age required for admission. The superintendent shall furnish application blanks upon request,

* NOTE: Section 25-06-03 was also amended by section 1 of House Bill No. 1198, chapter 339.

and no person may be admitted to the institution until the application giving ~~such~~ that information ~~as~~ that the ~~director of institutions may require~~ superintendent of public instruction requires has been returned to and approved by the superintendent. An applicant admitted to the school must be furnished transportation by the school as provided in the student's individualized education program at the most economical rate possible, and yet meet the student's needs. Each ~~such~~ applicant who is a resident of this state and who, because of ~~his handicap hearing impairment~~, is unable to receive an education in the public schools, is entitled to receive an education in the school for the deaf at the expense of the state.

SECTION 11. AMENDMENT. Section 25-07-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-07-05. Admission of nonresidents. Deaf children of suitable age who are not residents of this state ~~shall be entitled to an education may~~ enroll in the school for the deaf upon payment in advance of the cost of ~~such the~~ education as ~~shall be~~ determined by the ~~director from time to time~~ superintendent of public instruction. Nonresident children, however, ~~shall may not be~~ received to the exclusion of children who are residents of this state.

SECTION 12. A new section to chapter 25-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

School for the deaf - Appointment of superintendent, budget, staff, and reporting structure. The superintendent of the school for the deaf is appointed by and reports to the superintendent of public instruction. The school for the deaf must have a separate budget and separate staff from the department of public instruction.

* SECTION 13. AMENDMENT. Section 54-23-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-23-01. Institutions under control of director of institutions. The director of institutions shall ~~have full power to~~ manage, control, and govern, subject only to the limitations contained in this chapter ~~and in title 25, the penitentiary, the school for the blind, the school for the deaf, the Grafton state school, the North Dakota industrial school, and San Haven department of corrections and rehabilitation and state radio communications. The director does not have the power to manage, control, and govern the veterans' home.~~

SECTION 14. AMENDMENT. Section 54-24-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-24-01. State library - State librarian appointed by ~~director of institutions~~ the superintendent of public instruction. The ~~director of institutions~~ superintendent of public instruction shall appoint an executive officer to be known as the state librarian, who shall report to the superintendent and must receive a salary within the amount appropriated for salaries by the legislative assembly. The state librarian shall have control of the work and shall be is the director of the state library. The state library is an autonomous agency and retains a budget and staff separate from that of the superintendent of public instruction.

* NOTE: Section 54-23-01 was also amended by section 49 of Senate Bill No. 2212, chapter 156.

SECTION 15. AMENDMENT. Section 54-24-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-24-03. Powers and duties of state librarian. The state librarian shall:

1. Make rules ~~and regulations according to which the business for the operation~~ of the state library ~~shall be done~~.
2. Provide and care for all books and library materials in all collections of the state library, general, reference, and special, and make all rules regarding the loaning and returning of library materials.
3. Employ qualified library personnel to care for all library procedures.
4. Make library materials available to libraries throughout the state, to individuals connected with departments of state, and to citizens of North Dakota who do not have adequate library facilities, under the rules ~~and regulations~~ of the state library.
5. Promote and assist by counsel and encouragement the formation of libraries and the improvement of those already established, in keeping with state and national standards, and be available to librarians and trustees of libraries in the state for assistance in organization, maintenance, or administration of the libraries.
6. Coordinate the efforts of librarianship throughout the state, advising and assisting the extension of qualified public libraries into centers of county or regional (multicounty) libraries.
7. Compile statistics of the free public libraries of North Dakota and their larger counterparts of county and regional libraries, and of the work done at the state library, and make a full biennial report to the ~~state director of institutions~~ superintendent of public instruction and the governor.
8. Collect, maintain, and make available a reference and reading collection of books, slides, films, and other graphic materials ~~such as will~~ that supplement and support the needs of all libraries in the state, either by direct loan or by consultation, and ~~such as will~~ that form a reference source for the officers of the state in ~~the performance of performing~~ their duties.
9. Collect and maintain a collection of the publications of the departments and agencies of state government, including the enacted laws of this state, current session laws and journals.
10. Conduct, or ~~arrange to~~ have conducted, research into the conditions of library service in the state, and produce written plans for the development and betterment of ~~such that~~ service.
11. Compile, or ~~arrange to~~ have compiled, union lists of resources of libraries throughout the state, and make ~~such those~~ lists available for consultation.

12. Establish levels of certification for librarians of the state ~~such as will~~ that meet the standards recommended by the American library association.

SECTION 16. GOVERNOR TO DEVELOP PLAN FOR TRANSFER OF POWERS AND DUTIES OF DIRECTOR OF INSTITUTIONS. The governor shall develop a plan for the transfer of the powers and duties of the director of institutions to other state agencies and departments and submit the plan to the fifty-second legislative assembly.

SECTION 17. EFFECTIVE DATE. This Act becomes effective on January 1, 1991.

Approved April 11, 1989

Filed April 12, 1989

CHAPTER 240

HOUSE BILL NO. 1424
(Representative Gates)
(Senator Holmberg)

NONRENEWAL OF FIRST-YEAR TEACHERS

AN ACT to amend and reenact section 15-47-27.1 of the North Dakota Century Code, relating to the nonrenewal of contracts of first-year teachers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-47-27.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-27.1. First-year teachers - Evaluation - Renewal and nonrenewal of contracts. Each school district and the director of institutions in this state shall have an established system through which two written evaluations are prepared during each school year for every teacher who is in his or her first year of teaching. The evaluation must be in the form of written performance reviews, and the first review must be completed and made available to first-year teachers no later than December fifteenth and the second review must be completed and made available no later than March fifteenth of each year. A school board contemplating not renewing the contract of a first-year teacher shall, after reviewing the evaluations, meet in an executive session with the teacher to discuss the reasons for the proposed nonrenewal. The teacher may be represented at the meeting by two representatives of the teacher's own choosing and the teacher's spouse or one other family member of the teacher's choice. No claim for relief for libel or slander may be brought for any statement expressed either orally or in writing at any executive session of the school board held pursuant to this section. If a school board or the director of institutions determines not to renew the contract of a first-year teacher, written notification of the decision of nonrenewal must be given to the teacher no earlier than April fifteenth nor later than May first. Failure by a school board or the director of institutions to provide written notification of nonrenewal to a first-year teacher by May first constitutes an offer to renew the contract of the teacher for the ensuing school year under the same terms and conditions as the contract for the current year. Such notification of nonrenewal given to a first-year teacher must contain a detailed description of the reason or reasons for the nonrenewal.

Approved April 10, 1989
Filed April 11, 1989

* NOTE: Section 15-47-27.1 was also amended by section 2 of House Bill No. 1229, chapter 239.

CHAPTER 241

HOUSE BILL NO. 1041
(Legislative Council)
(Interim Education Committee)

EDUCATIONAL TELECOMMUNICATIONS COUNCIL

AN ACT to amend and reenact sections 15-47-36, 15-65-01, 15-65-02, and 15-65-03, subdivision h of subsection 1 of section 28-32-01, and subdivision 1 of subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to the membership and name of the educational broadcasting council and the terms educational television services or facilities and radio facilities; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-47-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-47-36. Contracts authorized for educational television. The superintendent of public instruction may contract, for a period of not to exceed two years, with provisions for its renewal for like periods, ~~with a nonprofit corporation~~ for the purpose of providing the people of the state with educational ~~television services~~ telecommunication programs and systems in the fields of elementary, secondary, and higher education, adult education, and other fields tending to promote cultural development.

SECTION 2. AMENDMENT. Section 15-65-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-65-01. North Dakota educational ~~broadcasting telecommunications~~ council - Creation - Purpose. ~~The North Dakota legislative assembly hereby creates the~~ North Dakota educational broadcasting telecommunications council for the purpose of encouraging and directing shall encourage and direct the creation of educational radio and television facilities telecommunication programs and systems within the state of North Dakota.

SECTION 3. AMENDMENT. Section 15-65-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-65-02. Membership - Appointment - Term - No compensation - Expenses - Organization. The North Dakota educational broadcasting telecommunications council shall be composed consists of twelve members as follows: two ex officio members; one appointed by the board;

1. The commissioner of higher education; one appointed by the or the commissioner's designee.
2. The superintendent of public instruction; and eight or the superintendent's designee.

3. One citizen member appointed by the governor giving preference to users of a telecommunications system.
 4. The director of the central data processing division of the office of management and budget.
 5. A representative of prairie public broadcasting, appointed by the governor.
 6. A representative of the telephone industry, appointed by the governor.
 7. A representative of the North Dakota association of telephone cooperatives, appointed by the governor.
 8. A representative of the North Dakota cable television association, appointed by the governor.
 9. A school board member, appointed by the governor.
 10. A school administrator, appointed by the governor.
 11. A schoolteacher, appointed by the governor.
- 1- The ex officio members shall be:
- a- The state superintendent of public instruction or his designated representative from that office.
 - b- The commissioner of higher education or his designated representative from that office.
- 2- The appointed members shall be drawn from the public at large with no fewer than four from the western half of the state and no fewer than four from the eastern half of the state. The term of office shall be seven of the appointed members is three years, except that of the original appointees, two three shall serve one year, two three shall serve three two years, and two shall serve five three years, and two shall serve seven years, which appointees to be determined by lot. At all times either the school board member or the school administrator must be from a school with an enrollment of less than five hundred students.
- 3- No member shall receive any compensation but shall The two citizen members, the school board member, the school administrator, and the schoolteacher appointed by the governor must be reimbursed for reasonable and actual necessary expenses incurred in connection with service on the performance of their duties as members of the council at the same rates as provided by law for other state officers and employees. The costs incurred in reimbursing the two citizen members of the council for their actual necessary expenses must be paid by the superintendent of public instruction. The other members of the council are not entitled to any compensation or reimbursement for expenses incurred in performing their duties. The governor superintendent of public instruction shall call the initial meeting of the council at which time the council shall

elect its chairman and other officers and take such other action as it deems appropriate.

SECTION 4. AMENDMENT. Section 15-65-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-65-03. Powers and duties. The council ~~is directed~~ shall:

1. Direct the implementation of telecommunication systems that are compatible and that can be connected with each other.
2. Develop a comprehensive written plan for the development of telecommunications in this state.
3. ~~To be~~ Be concerned with the development and use of statewide educational ~~television and radio facilities~~ telecommunication programs and systems.
- ~~2- 4.~~ 4. ~~To hold~~ Hold coordinating authority for the development of such statewide educational ~~radio and television facilities~~ telecommunication programs and systems as may be required to serve the entire state.
- ~~3- 5.~~ 5. ~~To assist~~ Assist any organization, state agencies, or both in the preparation, filing, and prosecution before ~~the federal communications commission~~ agencies such applications, reports, or other documents or requests ~~for authorization~~ of any kind ~~as~~ that may be necessary or appropriate to achieve the purposes of this chapter.
- ~~4- 6.~~ 6. ~~To receive~~ Receive gifts and contributions from public and private sources to be expended ~~through the stations~~ to provide educational ~~broadcasting facilities and telecommunication programs; provided before accepting any tax-producing facilities the commission must first be given the approval by the budget section of the legislative council~~ and systems.
- ~~5- 7.~~ 7. ~~To be~~ Be concerned with the activation of educational broadcasting channels presently assigned to North Dakota, or the reallocation or addition of ~~such~~ the channels, or both, as are determined to be in the best interests ~~of~~ the people of the state.
- ~~6- 8.~~ 8. ~~To actively~~ Actively cooperate with the state department of public instruction and the state board of higher education and other agencies and private organizations for the purpose of developing statewide educational ~~broadcasting~~ telecommunication projects.
- ~~7- 9.~~ 9. ~~To adopt~~ Adopt bylaws for the conduct of its affairs.
- ~~8- 10.~~ 10. ~~To publish such~~ Publish the informational material ~~as~~ it deems necessary.
- ~~9- 11.~~ 11. ~~To carry~~ Carry on a continuing study relating to the needs, resources, and facilities which are available or may be required to establish educational ~~radio and television facilities~~ telecommunication programs and systems throughout the entire state.

~~+0.~~ 12. ~~To contract~~ Contract with eligible applicants to build and operate public television stations in this state. Eligible applicants are those licensed by the federal communications commission to operate noncommercial public television stations. Operational contracts shall not exceed the amount raised within the preceding fiscal year by the applicant from nontax sources in this state.

SECTION 5. AMENDMENT. Subdivision h of subsection 1 of section 28-32-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

h. The educational ~~broadcasting~~ telecommunications council.

* SECTION 6. AMENDMENT. Subdivision 1 of subsection 1 of section 54-07-01.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The educational ~~broadcasting~~ telecommunications council.

SECTION 7. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,500, or so much thereof as may be necessary, to the superintendent of public instruction for the purpose of reimbursing the necessary expenses of certain members of the North Dakota educational telecommunications council, for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 13, 1989
Filed April 13, 1989

* NOTE: Section 54-07-01.2 was also amended by section 70 of Senate Bill No. 2257, chapter 80, and section 3 of Senate Bill No. 2324, chapter 295.

CHAPTER 242

SENATE BILL NO. 2470
(Heinrich)

TEACHER DISCHARGE IN ABUSE OR NEGLECT CASES

AN ACT to create and enact a new subsection to section 15-47-38 of the North Dakota Century Code, relating to the reasons for the nonrenewal and discharge of a teacher.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 15-47-38 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

No teacher may be discharged and no school board may refuse to renew a teacher's contract under this section based solely upon an investigation of alleged child abuse or neglect made under section 50-25.1-05.1 in which a determination was made that no probable cause existed to believe that the child abuse or neglect was indicated, or in which a determination was made that probable cause did exist to believe that child abuse or neglect was indicated but a decision relating to the alleged abuse or neglect has not been made by a court of competent jurisdiction. If a school board is notified that a finding of probable cause is made, this subsection does not prevent the school board from moving to suspend the teacher under the provisions of subsection 4.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 243

SENATE BILL NO. 2473
(Olson)

NAMES

AN ACT to require the use of a pupil's legal surname in schools; and to amend and reenact section 32-28-02 of the North Dakota Century Code, relating to petitions for change of name in district court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Use of pupils' legal surnames. Each pupil enrolled in a public, private, or parochial school or a day care center, child care facility, head start program, or nursery school must be registered in that pupil's legal surname, and all records maintained by the school, center, facility, or program with regard to a pupil must be maintained in that pupil's legal surname. All officials, teachers, administrators, and other employees of a school, center, facility, or program shall use the legal surname in all communications in which a surname of a pupil is used.

SECTION 2. AMENDMENT. Section 32-28-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-28-02. Change of name of person - Petition. Any person desiring to change his or her name may file a petition in the district court of the county in which the person is a resident, setting forth:

1. That the petitioner has been a bona fide resident of the county for at least six months prior to the filing of the petition.
2. The cause for which the change of the petitioner's name is sought.
3. The name asked for.

The judge of the district court, upon being duly satisfied by affidavit or proof in open court of the truth of the allegations set forth in the petition, that there exists proper and reasonable cause for changing the name of the petitioner, and that thirty days' previous notice of the intended application has been given in some newspaper printed in the district, shall order a change of the name of the petitioner. The court may waive publication of the notice when the proposed change relates only to a first or given name as distinguished from a surname.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 244

SENATE BILL NO. 2215
(Committee on Education)

(At the request of the Superintendent of Public Instruction)

CHILD NUTRITION AND FOOD DISTRIBUTION PROGRAMS

AN ACT to amend and reenact sections 15-54-01, 15-54-02, 15-54-03, 15-54-04, 15-54-05, and 15-54-06 of the North Dakota Century Code, relating to the child nutrition and food distribution programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-54-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-54-01. Definitions. In this chapter unless the context otherwise clearly requires:

1. "Child nutrition program" means any program that provides federal assistance for the provision of nutritious meals for children.
2. "Food distribution program" means any program that provides federally donated agricultural commodities, products, and other foods, or cash payments in lieu of foods, to eligible participants.
3. "School" shall mean means a public or private nonprofit school operated by a school district as provided for in this title.
- ~~2.~~ 4. "School board" shall mean means publicly elected officials as provided for in this title.
- ~~3.~~ "School lunch program" means a program under which lunches are served by any school in the state on a nonprofit basis to children in attendance; including any such program under which a school receives assistance out of funds appropriated by the Congress of the United States.
- ~~4.~~ 5. "State educational agency" shall mean means the state department of public instruction.

SECTION 2. AMENDMENT. Section 15-54-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-54-02. Expenditure of federal funds. The state educational agency shall establish a fund known as the North Dakota school lunch fund. All moneys received by the state educational agency, from the federal government or any other source, for the North Dakota school lunch program, shall be placed in such a fund. All disbursements from such funds shall be made only by checks or warrants drawn on the school lunch fund. Such checks and warrants shall be drawn only by persons who are duly authorized to do so by

resolution of the state educational agency administer federal funds designed to provide nonprofit child nutrition programs and food distribution programs for eligible participants. The state educational agency may enter into a contract with any agency of the federal government so that the available federal funds may be used to the fullest extent possible by the state. The state educational agency shall receive, deposit, and disburse the funds in accordance with state and federal law, regulations, and policies.

SECTION 3. AMENDMENT. Section 15-54-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-54-03. Administration of program. The state educational agency may enter into such agreements with any agency of the federal government, with any school board, or with any other agency or person, public or nonprofit private agency, school, institution, organization, corporation, firm, foundation, or entity and prescribe such regulations, employ such personnel, and take such other action, as it may deem necessary to provide for the establishment, maintenance, operation, and expansion of any school lunch child nutrition and food distribution program, and to direct the disbursement of federal and state funds, in accordance with any applicable provisions of federal or state law. The state educational agency may give technical advice and assistance to any school board person, public or nonprofit private agency, school, institution, organization, corporation, firm, foundation, or entity in connection with the establishment and operation of any school lunch child nutrition and food distribution program and may assist in training personnel engaged in the operation of such program programs. The state educational agency and any school board person, public or nonprofit private agency, school, institution, organization, corporation, firm, foundation, or entity may accept any gift for use in connection with any school lunch child nutrition and food distribution program.

SECTION 4. AMENDMENT. Section 15-54-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-54-04. School boards. Pursuant to any power of school boards to operate or provide for the operation of school lunch child nutrition and food distribution programs in schools under their jurisdiction, school boards may use therefor funds disbursed to them under the provisions of this chapter, gifts, and other funds received from the sale of school lunches meals under such programs.

SECTION 5. AMENDMENT. Section 15-54-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-54-05. Accounts, records, reports, and operations. The state educational agency shall prescribe regulations for the keeping of accounts, and records and the making of reports by or under the supervision of school boards any person, public or nonprofit private agency, school, institution, organization, corporation, firm, foundation, or entity participating in a child nutrition or food distribution program. Such accounts and records at all times shall be available for inspection and audit by authorized officials and shall be preserved for such period of time, not in excess of five years, as the state educational agency lawfully may prescribe. The state educational agency shall conduct or cause to be conducted such audits, inspections, and administrative reviews of accounts, records, and operations with respect to school lunch child nutrition and food distribution programs as may be necessary to determine whether its agreements with school boards

entered into and regulations made pursuant to rules adopted under this chapter are being complied with, and to ensure that ~~school lunch~~ child nutrition and food distribution programs are effectively administered.

SECTION 6. AMENDMENT. Section 15-54-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-54-06. Studies, appraisals, and reports to governor. The state educational agency to the extent that funds are available for that purpose, and in cooperation with other appropriate agencies and organizations, may conduct studies of methods of improving and expanding ~~school lunch~~ child nutrition and food distribution programs and promoting nutritional education in the schools, may conduct appraisals of the nutritive benefits of ~~school lunch~~ child nutrition and food distribution programs, and may report its findings and recommendations from time to time, to the governor.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 245

SENATE BILL NO. 2039
(Legislative Council)
(Interim Education Finance Committee)

SPECIAL EDUCATION BOARDING HOME CARE

AN ACT to amend and reenact sections 15-59.3-01, 15-59.3-02, 15-59.3-03, 15-59.3-04, 15-59.3-05, 15-59.3-06, 15-59.3-07, 15-59.3-08, and 15-59.3-10 of the North Dakota Century Code, relating to boarding home care for special education students.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-59.3-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59.3-01. Definitions. As used in this chapter:

1. "Boarding home care for special education students" means the provision of boarding home care for those students described in subsection 1 of section 15-59-01 and includes the provision of food, shelter, security, and safety, on a twenty-four-hour basis to one or more students.
2. "Department" means the department of human services.
3. "Family boarding home" means an occupied private residence at which boarding home care for special education students is regularly provided by the owner or lessee thereof to no more than four children, unless all students provided boarding home care are related to each other by blood or marriage, in which case this limitation shall not apply.
4. ~~"Group boarding home" means an occupied private residence in which boarding care for special education students is regularly provided for more than four, but less than ten, unrelated students.~~
- 5- "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this chapter.
- 6- 5. "Registration" means the process whereby the department maintains a record of all family boarding ~~or residential care facilities~~ homes, prescribes standards and ~~promulgates regulations~~ adopts rules under section 15-59.3-06, and requires the operator of such home ~~or facility~~ to certify that ~~he~~ the operator has complied with the prescribed standards and ~~promulgated regulations~~ adopted rules.
- 7- 6. "Registration certificate" is a written instrument issued by the department to publicly document that the certificate holder ~~has~~

~~certified his~~ is in compliance with this chapter and the applicable regulations rules and standards ~~as~~ prescribed by the department.

~~8-~~ 7. "Relative" means any person having the following relationship to the student by marriage, blood, or adoption: grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt.

~~9-~~ "Residential boarding care facility" means a facility other than an occupied private residence providing boarding home care for more than eight special education students, except as may be otherwise provided by rule or regulation.

SECTION 2. AMENDMENT. Section 15-59.3-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59.3-02. Boarding home care for special education students - Registration required. No person, partnership, voluntary organization, or corporation ~~shall~~ may establish or operate a family boarding home, ~~group boarding home, or residential boarding care facility~~ without first obtaining a registration certificate. The mandatory provisions of this section requiring registration ~~shall~~ do not apply when the boarding home care is provided in:

1. The home of a relative.
2. A home or institution under the management and control of the state or the public school board.
3. A home ~~or facility~~ furnishing "foster care for children" as defined in subsection 1 of section 50-11-00.1.

SECTION 3. AMENDMENT. Section 15-59.3-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59.3-03. Public agency purchase of boarding home care for special education students. No agency of state or local government ~~shall~~ may purchase or provide boarding home care for special education students unless the family boarding home, ~~group boarding home, or residential boarding care facility~~:

1. Has obtained a registration certificate; or
2. If exempted from registration by ~~subsections~~ subsection 1 or 2 of section 15-59.3-02, complies with all applicable standards, ~~and rules, and regulations as may be issued or promulgated~~ adopted by the department.

SECTION 4. AMENDMENT. Section 15-59.3-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59.3-04. Registration certificate granted. Applications for a registration certificate for the operation of a home ~~or facility~~ receiving special education students for boarding home care shall be made on the forms provided, and in the manner prescribed, by the department. The department may investigate the applicant's activities and make an inspection of the proposed home ~~or facility~~. A registration certificate for the operation of

the home ~~or facility~~ shall be granted by the department within ten working days of receipt of the proper forms upon a determination that:

1. The premises to be used are in sanitary condition and properly equipped to provide for the health and safety of all students who may be received;
2. The persons in charge of such home ~~or facility~~ and their assistants are qualified to fulfill the duties required of them according to the provisions of this chapter and the rules, ~~regulations~~, and standards prescribed by the department; and
3. The home ~~or facility~~ will be maintained according to the standards prescribed for its conduct by the rules ~~and regulations~~ of the department. The registration certificate shall be in ~~force and~~ effect for a period of not more than two years.

SECTION 5. AMENDMENT. Section 15-59.3-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59.3-05. Conviction not bar to registration - Exceptions. Conviction of an offense ~~shall~~ does not disqualify a person from registration under this chapter unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as the owner or proprietor of a boarding home ~~or facility~~ for special education students, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 6. AMENDMENT. Section 15-59.3-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59.3-06. Minimum standards - Rules ~~and regulations~~ - Inspection by a governmental unit. The department may:

1. Establish reasonable minimum standards for the operation of boarding homes ~~and facilities~~ and the registration of such homes ~~and facilities~~. In appropriate circumstances and upon good cause shown, specific minimum standards may be substituted by alternate, equivalent standards, approved by the department.
2. Take such action and make such reasonable rules ~~and regulations~~ for the regulation of boarding home care for special education students as may be necessary to carry out the purposes of this chapter and entitle the state to receive aid from the federal government.
3. Authorize a governmental unit to:
 - a. Inspect any home ~~or facility~~ for which a registration certificate is applied for or issued under this chapter; and
 - b. Certify to the department that the home ~~or facility~~ meets the requirements of this chapter and the minimum standards prescribed by the department.

SECTION 7. AMENDMENT. Section 15-59.3-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59.3-07. Investigation of applicants and registrants - Maintenance of records - Confidentiality of records.

1. The department and its authorized agents at any time may investigate and inspect the conditions of the home ~~or facility~~ and the qualifications of the owner or operator thereof. Upon request of the department, the state department of health and consolidated laboratories or the state fire marshal, or his designee, shall inspect any home ~~or facility~~ for which a registration certificate is applied for or issued and shall report its findings to the department.
2. All holders of registration certificates shall:
 - a. Maintain such records as the department may prescribe regarding each student in their care and control, and shall report to the department, when requested, such facts as the department may require with reference to the students upon forms furnished by the department; and
 - b. Admit for inspection authorized agents of the department and open for examination all records, books, and reports of the home ~~or facility~~.
3. All records and information maintained with respect to students receiving ~~departmenting~~ home care for special education students shall be deemed are confidential and, must be properly safeguarded, and ~~shall must~~ not be disclosed except:
 - a. In a judicial proceeding;
 - b. To officers of the law or other legally constituted departments or agencies; or
 - c. To parents and persons having a definite interest in the well-being of the student or students concerned and who, in the judgment of the department, are in a position to serve their interests should that be necessary.

SECTION 8. AMENDMENT. Section 15-59.3-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59.3-08. Revocation of registration certificate. The department may revoke the registration certificate of any family boarding home, ~~group boarding home, or residential boarding care facility~~ upon a proper showing of any of the following:

1. Any of the applicable conditions set forth in section 15-59.3-04 as prerequisites for the issuance of the registration certificate no longer exist.
2. The registrant is no longer in compliance with the minimum standards prescribed by the department.
3. The registration certificate was issued by fraudulent or untrue representation.

4. The registrant has violated any rules **and regulations** of the department.
5. The registrant has been guilty of an offense determined by the department to have a direct bearing upon a person's ability to serve the public as a registrant.
6. The registrant has been convicted of any offense and the department, pursuant to section 12.1-33-02.1, has determined that ~~he~~ the registrant has not been sufficiently rehabilitated.

SECTION 9. AMENDMENT. Section 15-59.3-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-59.3-10. Contents of registration certificate. The registration certificate shall show the name of the owner or operator of the boarding home **or facility**, its location, and the maximum number of students who may be received and kept there at any one time.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 246

HOUSE BILL NO. 1087
(Committee on Education)
(At the request of the State Auditor)

BIENNIAL SCHOOL FUND AUDITS

AN ACT to amend and reenact section 15-60-07 of the North Dakota Century Code, relating to examination of records and accounts of the state board of public school education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 15-60-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-60-07. Moneys of the fund. The custodian of the building fund of any school district for which a building or an addition to an existing building has been constructed shall pay annually to the state treasurer all moneys due as rental or rentals together with two and one-half percent interest as herein provided, which money shall be credited to the state school construction fund. The moneys in said account shall be paid out on the warrant or other order by the chairman and secretary of the board. The state auditor or his legally authorized representatives are hereby authorized and directed to audit the accounts and books of the board, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other matters relating to its finances, operation, and affairs **annually at least once every two years.**

Approved March 9, 1989
Filed March 9, 1989

* NOTE: Section 15-60-07 was also amended by section 13 of House Bill No. 1002, chapter 2.

CHAPTER 247

SENATE BILL NO. 2171
(Committee on Education)
(At the request of the Board of Higher Education)

SCHOLARS PROGRAM

AN ACT to amend and reenact sections 15-62.2-00.1, 15-62.2-01, 15-62.2-02, 15-62.2-03.1, 15-62.2-03.2, 15-62.2-03.3, 15-62.2-03.4, 15-62.2-03.5, and 15-62.2-04 of the North Dakota Century Code, relating to the name of the North Dakota merit scholarship program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-62.2-00.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.2-00.1. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Eligible candidate" means a graduate of a high school in this state or a resident of this state for tuition purposes whose assessment composite scores on the test of academic achievement administered by the American college testing program place the student in at least the ninety-fifth percentile of all students taking the test for the year preceding January first of the year in which the student is applying for a scholarship, and who ranks in the upper twentieth percentile of the student's high school class.
2. "Eligible institution" means an accredited public or nonprofit private postsecondary institution in this state.
3. "Full-time resident student" means a person who is a graduate of a high school in this state or who is a resident of this state for tuition purposes and who is enrolled at an eligible institution carrying a course of study which is "full time" as defined by the eligible institution.
4. "High school class rank" means the position a merit scholarship candidate holds in the candidate's graduating class as of the seventh semester of the candidate's high school program.
5. "~~Merit scholar~~" "Scholar" means a full-time resident student who is awarded a merit scholarship or who has previously received a merit scholarship.
6. "~~Merit scholarship~~" "Scholarship" means a financial award granted to a state scholar as determined by this chapter.

SECTION 2. AMENDMENT. Section 15-62.2-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.2-01. Student financial assistance and merit scholarship scholars programs - Establishment - Administrative responsibility. The North Dakota student financial assistance and merit scholarship scholars programs are established to provide grants or merit scholarships, or both, to assist the following students:

1. Resident undergraduate students pursuant to section 15-10-19.
2. North Dakota resident students who have attended and graduated from a high school in a bordering state pursuant to section 15-40.2-10, who are attending qualified institutions of postsecondary education within North Dakota.
3. North Dakota resident students who, because of physical or mental handicap as certified by a physician, are attending postsecondary institutions out of state due to the lack of special services or facilities, or both, necessary to meet the postsecondary educational needs of the handicapped students within North Dakota.
4. Merit scholars Scholars who qualify and are selected for merit scholarships pursuant to sections 15-62.2-00.1 and 15-62.2-03.1 through 15-62.2-03.5.

A student must be in substantial need of financial assistance to receive grants under the student financial assistance program. The state board of higher education shall administer the student financial assistance program and the merit scholarship scholars program.

* SECTION 3. AMENDMENT. Section 15-62.2-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.2-02. Board of higher education - Powers and duties. The board of higher education shall:

1. Administer the North Dakota student financial assistance program and the North Dakota merit scholarship scholars program and adopt functional rules regarding the eligibility and selection of grant and merit scholarship recipients.
2. Determine the amount of individual grants, but not to exceed five hundred dollars per recipient per academic year under the North Dakota student financial assistance program.
3. Adopt for the North Dakota student financial assistance program, criteria for substantial need based upon the ability of the parents or guardian to contribute toward the applicant's educational expenses.
4. Establish the appropriate procedures for fiscal control, fund accounting, and necessary reports.

* NOTE: Section 15-62.2-02 was also amended by section 1 of Senate Bill No. 2344, chapter 248.

5. Apply for, receive, expend, and administer granted moneys from federal or private sources.

SECTION 4. AMENDMENT. Section 15-62.2-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.2-03.1. Administration of merit scholarship scholars program. The board of higher education shall administer the merit scholarship scholars program and shall adopt procedures and guidelines necessary to carry out the purposes of this chapter. The board of higher education shall establish appropriate procedures for fiscal control, fund accounting, and necessary reports.

SECTION 5. AMENDMENT. Section 15-62.2-03.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.2-03.2. Reapplication eligibility - Amount of scholarships - Duration. Merit scholars Scholars are eligible to reapply for merit scholarships for subsequent academic years provided they maintain a 3.6 grade point average based upon a 4.0 grading system. The amount of the merit scholarship must equal the tuition charged at the merit scholar's eligible institution but may not exceed the amount charged for tuition at the state universities. A state scholar may receive a merit scholarship for not more than eight semesters or twelve quarters of undergraduate study, or until the attainment of the student's baccalaureate degree, whichever comes first.

SECTION 6. AMENDMENT. Section 15-62.2-03.3 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.2-03.3. Selection of merit scholars. All eligible candidates must be ranked by their composite scores on the test of academic achievement administered by the American college testing program. If two or more eligible students have the same scores, they must be ranked by their high school class rank calculated on a percentile basis. Merit scholarships Scholarships must be offered to students in descending order according to this ranking until available funds have been expended, or until the pool of eligible applicants has been exhausted. Merit scholarships Scholarships must be awarded in April of each year for the following academic year, or as soon thereafter as practical.

SECTION 7. AMENDMENT. Section 15-62.2-03.4 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.2-03.4. Payment of merit scholarships. One-half of the annual merit scholarship must be paid to each merit scholar at the beginning of the fall semester and one-half at the beginning of the spring semester for students attending institutions on the semester system. One-third of the merit scholarship must be paid to each merit scholar at the beginning of each quarter for merit scholars attending institutions on the quarter system. Payments must not be made until the merit scholar's enrollment and full-time resident student status has been certified by the eligible institution the student is attending. Merit scholarship Scholarship funds must be paid by

warrant-check prepared by the office of management and budget upon vouchers prepared for this purpose.

SECTION 8. AMENDMENT. Section 15-62.2-03.5 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.2-03.5. Use of funds - Refund policy. ~~Merit scholarships~~ Scholarships may be used to defray costs of tuition, fees, room, board, books, supplies, and other expenses incidental to attending an eligible institution. If a ~~merit~~ scholar discontinues attendance before the completion of any semester or quarter for which a ~~merit~~ scholarship has been received, any refund is governed by the published refund or repayment policy of the eligible institution.

SECTION 9. AMENDMENT. Section 15-62.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-62.2-04. Funds received by the board of higher education - Where deposited - How appropriated - How expended. Funds received by the board of higher education must be deposited in the state treasury in special funds to be known as the North Dakota student financial assistance fund and the North Dakota ~~merit~~ scholarship fund and expended in accordance with legislative appropriations. All expenditures from these funds must be paid by warrant-check prepared by the office of management and budget upon vouchers submitted by the board of higher education.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 248

SENATE BILL NO. 2344
(O'Connell, Mathern, Krebsbach, Kinnoin, Heinrich)

HIGHER EDUCATION STUDENT GRANTS

AN ACT to amend and reenact subsection 2 of section 15-62.2-02 of the North Dakota Century Code, relating to grants to students by the board of higher education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 2 of section 15-62.2-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Determine the amount of individual grants, but not to exceed ~~five~~ six hundred dollars per recipient per academic year under the North Dakota student financial assistance program.

Approved April 12, 1989
Filed April 13, 1989

* NOTE: Section 15-62.2-02 was also amended by section 3 of Senate Bill No. 2171, chapter 247.

CHAPTER 249

SENATE BILL NO. 2162

(Committee on Education)

(At the request of the Board of Higher Education)

INDIAN SCHOLARSHIP BOARD MEMBERS

AN ACT to amend and reenact section 15-63-01 of the North Dakota Century Code, relating to membership on the state board for Indian scholarships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-63-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-63-01. State board for Indian scholarships. There is hereby established a state board for Indian scholarships consisting of an Indian appointed by the governor, the executive director of the state Indian affairs commission, and the commissioner of higher education or the commissioner's designee. The commissioner of higher education or the commissioner's designee shall serve as chairman and the executive director of the state Indian affairs commission shall serve as secretary of the board for Indian scholarships.

Approved March 14, 1989

Filed March 15, 1989

ELECTIONS

CHAPTER 250

HOUSE BILL NO. 1276
(Haugen, Graba, Schmidt)

POLITICAL SUBDIVISION OFFICIALS RECALL

AN ACT to create and enact a new section to chapter 44-08 of the North Dakota Century Code, relating to recall of elected officials of political subdivisions; and to amend and reenact subsection 4 of section 16.1-01-09 and section 44-10-01 of the North Dakota Century Code, relating to recall petitions and removal from office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 16.1-01-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A petition for recall must include, before the signature lines for the qualified electors as provided in subsection 2, the name of the person being recalled, the office from which that person is being recalled, and a list of the names and post-office addresses including the residential addresses or post-office box numbers of not less than five qualified electors of the state, county political subdivision, or district in which the official is to be recalled who are sponsoring the recall.

SECTION 2. A new section to chapter 44-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Recall of elected officials of political subdivisions. An elected official of a political subdivision, except an official subject to recall pursuant to section 10 of article III of the Constitution of North Dakota, is subject to recall for misconduct, malfeasance, crime in office, neglect of duty in office, habitual drunkenness, or gross incompetency by petition of electors equal in number to twenty-five percent of voters voting in the political subdivision at the last election that the office of the official sought to be recalled was on the ballot, except in any political subdivision with a population of not more than one hundred, the petition must be signed by at least six electors. The provisions of section 16.1-01-09, as they relate to signing and circulating recall petitions, apply to petitions under this section.

The petition must be filed with the official with whom a petition for nomination to the office in question is filed unless that official is the person subject to recall, in which case the petition must be filed with the secretary of state. The official with whom the petition is filed shall pass on the sufficiency of a petition under this section in the manner required of the secretary of state under section 16.1-01-10. Except as otherwise provided in this section, the official shall call a special election to be held within thirty days if the official finds the petition valid and

sufficient. No special election may be called if the date would be within ninety days of the next scheduled election. An elector's name may not be removed from a recall petition.

The name of the official to be recalled must be placed on the ballot unless the official resigns within ten days after the filing of the petition. Other candidates for the office may be nominated in a manner provided by law. If the official resigns, the appropriate political subdivision governing body may call a special election or appoint a person to complete the unexpired term of the office. When the election results have been officially declared, the candidate receiving the highest number of votes is elected for the remainder of the term. No official is subject to recall twice during the term for which the official was elected.

SECTION 3. AMENDMENT. Section 44-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-10-01. Additional proceedings - Removal from office. In addition to the proceedings mentioned in chapter 32-13 and chapters 44-02, 44-08, and 44-11, and apart and distinct from any other criminal action or proceedings, the provisions of this chapter are adopted to obtain a judgment of removal from office.

Approved April 7, 1989
Filed April 7, 1989

CHAPTER 251

SENATE BILL NO. 2267
(Senators Stenehjem, Freborg, Mushik)
(Representative Kretschmar)

PARTY CONVENTION DELEGATE ELECTION

AN ACT to amend and reenact section 16.1-03-12 of the North Dakota Century Code, relating to election of delegates to state party conventions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-03-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-03-12. Meeting of district committee to elect delegates to state party convention - Optional precinct caucus - Proxies. Prior to the second Monday in June in each presidential election year and upon the call of the chairman, the district committee of each state senatorial district shall meet at a place designated by the chairman to elect delegates to a state party convention to be held as provided in this chapter. If the bylaws of the state senatorial district so provide, precinct committeemen may call a precinct caucus prior to the district meeting to elect additional delegates to attend the district meeting. ~~One~~ Unless the rules of the state party provide otherwise, one delegate to the state convention ~~shall~~ must be elected for each three hundred votes, or major fraction thereof, cast in the district at the last preceding presidential election for the candidates for presidential electors of the party, but every district ~~shall be~~ is entitled to at least one delegate. Delegates ~~shall~~ must be electors of their district. If any delegate ~~shall be~~ is unable to attend the convention, ~~he~~ that delegate shall designate in writing an alternate from the list of alternates selected at the district convention to attend and represent and act for ~~him~~ that delegate.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 252

SENATE BILL NO. 2064
(Legislative Council)
(Interim Legislative Procedure and Arrangements Committee)

CONSTITUTIONAL AMENDMENT INTENT STATEMENTS

AN ACT to amend and reenact section 16.1-06-09.1 of the North Dakota Century Code, relating to statements of intent in resolutions proposing constitutional amendments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-06-09.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-06-09.1. Constitutional amendments - Statement of intent. ~~Every~~ A statement setting forth the intent of the change proposed by a resolution proposing a change in the Constitution of North Dakota ~~shall contain a statement setting forth in clear and precise language the legislative purpose and intent of the proposed change; the statement shall fairly represent the substance and effect of the proposed change. The statement shall~~ must immediately precede the ballot title of the proposed constitutional amendment on the printed ballot, voting machines, or electronic voting systems.

Approved February 9, 1989
Filed February 9, 1989

CHAPTER 253

HOUSE BILL NO. 1493
(A. Olson, Timm)

ABSENT VOTER'S BALLOT APPLICATIONS

AN ACT to amend and reenact section 16.1-07-07 of the North Dakota Century Code, relating to applications for absentee ballots.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-07-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-07-07. Delivering application blank for ballot. The officers specified in section 16.1-07-05, upon request, shall mail an application blank for an absent voter's ballot to the voter, or they may deliver the application blank to the voter upon a personal application made at the officer's office. The officers may also make available or distribute the applications to the public without any specific request being made for the applications.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 254

HOUSE BILL NO. 1543
(Representatives Martin, Timm, Urlacher)
(Senators O'Connell, Krauter)

ABSENTEE BALLOT COUNTING

AN ACT to create and enact a new section to chapter 16.1-07 of the North Dakota Century Code, relating to the counting of absentee ballots.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 16.1-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Absentee ballot precinct - Election board appointment - Ballot counting.

1. For any primary, general, or special statewide or legislative district election, the board of county commissioners may create a special precinct, known as an absentee ballot precinct, for each legislative district in the county for the purpose of counting all absentee ballots cast in an election in that district. Each absentee ballot precinct is a separate precinct for the purpose of ballot arrangement rotation. The election board of the absentee ballot precinct must be known as the absentee ballot counting board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.
2. The governing body of the city shall appoint the election inspector in a district contained entirely within an incorporated city. The county auditor, with the approval of the board of county commissioners, shall appoint all other inspectors. Each district party chairman of the two parties which cast the largest and the next largest number of votes at the last general election shall appoint one election judge for each district. Each official of the board shall take the oath required by section 16.1-05-02 and must be compensated as provided in section 16.1-05-05.
3. The county auditor shall have the absentee ballots delivered to the inspector of the absentee ballot counting board with the election supplies, or if received later, then prior to the closing of the polls.
4. The absentee ballot counting board shall occupy a room designated by the county auditor which must be open to any person for the purpose of observing the counting process.
5. The absentee ballots must be opened and handled as required in section 16.1-07-12. The absentee ballot counting board may commence counting the absentee ballots at the same time as any

precinct within the county, city, or legislative district opens its polls. As soon as all the polls in the county, city, or legislative district close and the count is completed, the inspector shall announce publicly the results. The board shall comply with the requirements of sections 16.1-15-04 through 16.1-15-12, as applicable.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 255

SENATE BILL NO. 2510
(Senators Stromme, Dotzenrod)
(Representative Kaldor)

POLITICAL ADVERTISING FALSEHOODS

AN ACT to amend and reenact section 16.1-10-04 of the North Dakota Century Code, relating to false publication in political advertising.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 16.1-10-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-10-04. Publication of false information in political advertisements - Penalty. No person ~~shall~~ may knowingly sponsor any political advertisement or news release containing deliberately calculated falsehoods, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, ~~or~~ constitutional amendment, ~~or any other issue, question, or proposal on an election ballot,~~ and whether such publication ~~shall be~~ is by radio, television, newspaper, pamphlet, folder, display cards, signs, posters or billboard advertisements, or by any other public means. Any person who ~~shall violate~~ violates the provisions of this section ~~shall be~~ is guilty of a class A misdemeanor.

Approved April 13, 1989
Filed April 13, 1989

* NOTE: Section 16.1-10-04 was also amended by section 1 of Senate Bill No. 2497, chapter 256.

CHAPTER 256

SENATE BILL NO. 2497
(Senator Holmberg)
(Representative Shaft)

POLITICAL ADVERTISING FALSEHOODS

AN ACT to amend and reenact section 16.1-10-04 of the North Dakota Century Code, relating to false or misleading information in political advertisements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 16.1-10-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-10-04. Publication of false information in political advertisements - Penalty. No person ~~shall~~ may knowingly sponsor any political advertisement or news release ~~containing deliberately calculated falsehoods,~~ that contains any assertion, representation, or statement of fact, including information concerning a candidate's prior public record, which the sponsor knows to be untrue, deceptive, or misleading, whether on behalf of or in opposition to any candidate for public office, initiated measure, referred measure, or constitutional amendment, and whether such publication ~~shall be~~ is by radio, television, newspaper, pamphlet, folder, display cards, signs, posters or billboard advertisements, or by any other public means. Any person who ~~shall violate~~ violates the provisions of this section ~~shall be~~ is guilty of a class A misdemeanor.

Approved April 6, 1989
Filed April 7, 1989

* NOTE: Section 16.1-10-04 was also amended by section 1 of Senate Bill No. 2510, chapter 255.

CHAPTER 257

SENATE BILL NO. 2348
(Heinrich)

POLITICAL ADVERTISEMENT NAME DISCLOSURE

AN ACT to amend and reenact section 16.1-10-04.1 of the North Dakota Century Code, relating to the disclosure of names on political advertisements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-10-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-10-04.1. Certain political advertisements to disclose name of sponsor - Name disclosure requirements. Every political advertisement by newspaper, pamphlet or folder, display card, sign, poster, or billboard, or by any other public means, on behalf of or in opposition to any candidate for public office, designed to assist, injure, or defeat the candidate by reflecting upon the candidate's personal character or political action, must disclose at the bottom of the advertisement the name or names of the sponsor or sponsors of the advertisement, and the name or names of the person, persons, associations, or partnerships paying for the advertisement. If the name of an association or partnership is used, the disclaimer shall also include the name of the chairman or other responsible person from the association or partnership. The name or names of the person, persons, associations, or partnerships paying for any radio or television broadcast containing any advertising announcement for or against any candidate for public office must be announced at the close of the broadcast. If the name of an association or partnership is used, the disclaimer shall also include the name of the chairman or other responsible person from the association or partnership. In every political advertisement in which the name of the sponsor or person, association, or partnership paying for the advertisement is disclosed, the first and last name of any named person must be disclosed. This section does not apply to campaign buttons.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 258

SENATE BILL NO. 2166
(Committee on Judiciary)
(At the request of the Secretary of State)

SAMPLE BALLOT PUBLICATION

AN ACT to amend and reenact subsection 1 of section 16.1-11-21 and section 16.1-13-05 of the North Dakota Century Code, relating to publishing the sample primary and general election ballot.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 16.1-11-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A copy of the sample ballot of the primary election, as arranged by order and direction of the county auditor. The form of the sample ballot shall conform in all respects to the form prescribed for the sample primary ballot by the ~~legal publications handbook published pursuant to subsection 5 of section 46-01-02~~ secretary of state. The county auditor shall publish the sample ballot in all forms appropriate for the method or methods of voting in ~~his~~ the county. Sample ballots with inverted columns must be printed twice in each issue of the newspaper and in such manner as to assure that the column of each political party shall be displayed once in each issue in an upright position. Absent voters' ballots shall not be considered in determining which form of voting is used. Candidates from each legislative district which falls within the boundaries of the county shall be listed in a separate box or category by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district.

SECTION 2. AMENDMENT. Section 16.1-13-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-13-05. Notice of election - Contents - Publication with sample ballot. Notice of all general elections shall be published by the county auditor in the official county newspaper at the same time as, and as a part of, the publication of the sample ballot preceding such election. The notice shall be substantially as follows:

Notice is hereby given that on Tuesday, the ----- day of November, 19---, at the polling places in the various precincts in the county of -----, an election will be held for the election of state, district, and county officers, which election will be opened at ----- a.m. and will continue open until ----- p.m. of that day with the following exceptions:

Dated this ----- day of -----, 19---
Signed -----
County Auditor

The county auditor shall publish a copy of the sample ballot of the general election once each week for two consecutive weeks prior to the election in the official county newspaper. If no newspaper is published in the county, the publication shall be in a newspaper published in an adjoining county in the state. The form of the sample ballot as ordered and arranged by the county auditor shall conform in all respects to the form prescribed by the ~~legal publications handbook, published pursuant to subsection 5 of section 46-01-02,~~ secretary of state for the sample general election ballot. The county auditor shall publish the sample ballot in all forms appropriate for the method or methods of voting in ~~his~~ the county. Absentee voter ballots shall not be considered in determining which form of voting is used. Candidates from each legislative district which falls within the boundaries of the county shall be listed in a separate box or category by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 259

HOUSE BILL NO. 1323
(D. Larson, Aas)

INDEPENDENT NOMINEE PETITION STATEMENTS

AN ACT to amend and reenact section 16.1-12-02 of the North Dakota Century Code, relating to petition requirements of independent candidates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-12-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

16.1-12-02. Certificates of nomination by petition - Form and contents. Certificates of nomination for nominees for an office to be filled at a general or special election, except for an office appearing on the no-party ballot, may be made as provided by this section. The names of nominees so nominated shall appear on the ballot as independent nominations. Each certificate of nomination by petition shall contain:

1. The name of the nominee.
2. The office the nominee desires to fill.
3. The post-office address of the nominee.
4. ~~A statement in not more than five words of the party or principle which the nominee represents; but the statement shall not indicate an affiliation with or the support of any political party organized in accordance with this title.~~
5. Signatures of qualified electors who reside in the state, district, or political subdivision. The signatures need not be appended to one paper, and each person signing shall add his mailing address and the date of signing. The signatures on the petition shall be in the following number:
 - a. Except as provided in subdivision c, if the nomination is for an office to be filled by the qualified electors of the entire state, there shall be no fewer than one thousand signatures.
 - b. If the nomination is for an office to be filled by the qualified electors of a district less than the entire state, the number of signatures shall be ten percent of the number of votes cast in the district for governor at the last preceding general election, but in no case shall more than three hundred signatures be required.

- c. If the nomination is for the office of president, there shall be no fewer than four thousand signatures.
- ~~6-~~ 5. If the petition is for the office of governor or lieutenant governor, it shall contain the names and other required information of candidates for both those offices.

Approved April 10, 1989
Filed April 11, 1989

FIRES

CHAPTER 261

SENATE BILL NO. 2436
(Senator Wogsland)
(Representative Laughlin)

INSURANCE TAX DISTRIBUTION TO FIRE DISTRICTS

AN ACT to create and enact a new section to chapter 18-04 of the North Dakota Century Code, relating to creation of a special fund in the state treasury for distribution of insurance tax proceeds to fire departments; to amend and reenact section 18-04-05 and subsection 1 of section 26.1-03-17 of the North Dakota Century Code, relating to the distribution of insurance tax to cities, rural fire protection districts, and rural fire departments, and the allocation of a portion of the insurance premium tax to the insurance tax distribution fund; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-04-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-04-05. Amount due cities, rural fire protection districts, or rural fire departments - Certificate of commissioner of insurance to office of management and budget. The commissioner of insurance shall compute the amounts due to the several cities, townships, certified rural fire departments, or fire protection districts entitled to benefits under this chapter, and shall certify such amounts for payment to the office of management and budget on or before ~~June~~ September first of each year, in the following manner:

1. To cities not within the boundaries of a fire protection district, a sum equal to two and one-fourth percent of the premiums received by insurance companies issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril insurance on property in such cities.
2. To each city fire department performing service outside of its incorporated limits, the sum of one hundred dollars.
3. To each rural fire department not certified by the state fire marshal, the sum of two hundred dollars per year.
4. To each rural fire protection district organized within the provisions of this title or rural fire department certified by the state fire marshal, two hundred dollars plus a sum equal to two and one-fourth percent of the premiums received by insurance companies issuing policies for fire, allied lines, homeowner's multiple peril, farmowner's multiple peril, and commercial multiple peril insurance on property within the boundaries of such rural fire

protection districts or property served by certified rural fire departments.

The amount distributed by the commissioner of insurance pursuant to this section may not exceed the amount of the biennial appropriation made by the legislative assembly. ~~Payments by the commissioner of insurance in any fiscal year may not exceed one half of the biennial appropriation made by the legislative assembly must be distributed in September of each year beginning in September 1990. If the appropriation is less than the amount determined by applying the formula pursuant to this section, the commissioner of insurance by proration shall provide each eligible recipient the same proportion of the appropriation as the percent of the total funds it would have received pursuant to such formula.~~

SECTION 2. A new section to chapter 18-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Insurance tax distribution fund. The insurance tax distribution fund is a special fund in the state treasury. The portion of revenue provided in section 26.1-03-17 shall be deposited in the fund for disbursement as provided in this chapter, subject to legislative appropriation.

* SECTION 3. AMENDMENT. Subsection 1 of section 26.1-03-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and one-fourth percent with respect to accident and health insurance, and one and one-fourth percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable and must be deposited in the insurance tax distribution fund under section 2 of this Act but not in an amount exceeding two million six hundred thousand dollars in any fiscal year, and any amounts exceeding that amount must be deposited in the general fund in the state treasury.

SECTION 4. EFFECTIVE DATE. Sections 2 and 3 of this Act become effective on July 1, 1990.

Approved March 28, 1989
Filed March 28, 1989

- * NOTE: Subsection 1 of section 26.1-03-17 was also amended by section 1 of House Bill No. 1029, chapter 346, and section 1 of House Bill No. 1448, chapter 345.

CHAPTER 262

SENATE BILL NO. 2380
(Senators Wogsland, Ingstad, Maxson)
(Representatives V. Olson, Howard, Flaagan)

RURAL FIRE PROTECTION DISTRICT SECRETARY-TREASURER

AN ACT to amend and reenact section 18-10-04 of the North Dakota Century Code, relating to appointment of, and payment of salary to, a secretary-treasurer of a rural fire protection district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 18-10-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

18-10-04. Organization - Board of directors.

1. At the time and place fixed by the county auditor for the public meeting as provided in section 18-10-03, the electors who are owners of any interest in real or personal property assessed for taxation in the district and who are residing within the boundaries of the district shall have the opportunity to decide by majority vote of those present whether the organization of the district shall be completed. Permanent organization shall be effected by the election of a board of directors consisting of not less than five residents of the district, at least one of whom shall reside in and represent each township if the district includes more than one township. If the district is composed of more than seven townships, the board may elect to have only seven members, but no more than one member may be from any township.
2. The board of directors shall meet as soon after the organizational meeting as possible to elect a president, a vice president, and a secretary-treasurer. ~~All~~ Except as otherwise provided in this subsection, all directors and officers shall be elected for two years and hold office until their successors have been elected and qualified, except that at the first election the vice president shall be elected as provided in this section for a one-year term, and one-half, or as close to one-half as possible depending upon the total number of directors, of the directors elected at the first election following July 1, 1969, shall be selected by lot in the presence of a majority of such directors to serve one-year terms. Upon approval of a resolution by the board of directors, the office of secretary-treasurer may be filled by appointment rather than by election under this subsection. All officers shall serve without pay except the secretary-treasurer, who may be paid a salary determined by the board of directors.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 263

HOUSE BILL NO. 1332
(Representatives Tollefson, Skjerven)
(Senators Mutch, Krebsbach)

LPG APPLIANCES UNDER STATE BUILDING CODE

AN ACT to amend and reenact subsection 3 of section 18-12-25 and subsection 1 of section 54-21.3-03 of the North Dakota Century Code, relating to the state building code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 18-12-25 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Uniform Mechanical Code - international conference of building officials except that section 504(f) of the Uniform Mechanical Code is amended as provided in subsection 1 of section 54-21.3-03.

SECTION 2. AMENDMENT. Subsection 1 of section 54-21.3-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state building code consists of the 1985 Uniform Building Code with any existing supplements including the Uniform Mechanical Code with any existing supplements as referenced by the Uniform Building Code except that section 504(f) of the Uniform Mechanical Code is amended to read as follows:

Section 504(f). LPG Appliances.

Liquefied petroleum gas burning appliances, both automatically and manually controlled, may be installed in basements or similar locations only if (a) the appliances are of an American gas association-approved type and installed in accordance with national fire protection association pamphlets 54 and 58, (b) automatically controlled appliances are equipped with safety shutoff devices of the complete shutoff type, and (c) gas piping has been pressure tested and proven to be gas tight.

This code must be implemented by and may be amended by rules adopted by the director of the office of management and budget under chapter 28-32.

Approved March 21, 1989
Filed March 23, 1989

FOOD, DRUGS, OILS, AND COMPOUNDS

CHAPTER 264

SENATE BILL NO. 2169
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of
Health and Consolidated Laboratories)

FOOD, DRUGS, COSMETICS, AND PETROLEUM PRODUCTS

AN ACT to create and enact two new subsections to section 19-02.1-10, two new subsections to section 19-02.1-14, and a new subsection to section 19-02.1-18 of the North Dakota Century Code, relating to food, drugs, devices, and cosmetics; and to amend and reenact section 19-01-17, subsection 19 of section 19-02.1-01, sections 19-02.1-09, 19-02.1-11, 19-06.1-05, 19-08-02, subsection 2 of section 19-10-01, sections 19-10-16, 19-16.1-01, 19-16.1-10, and 19-17-01 of the North Dakota Century Code, relating to food, drugs, cosmetics, and petroleum products; and to repeal section 19-07-05 and chapter 19-11 of the North Dakota Century Code, relating to egg bonding and paints.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-01-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-01-17. Form of license to be issued. All licenses and permits issued by the department shall be uniform insofar as practicable and shall be on a suitable blank provided and prescribed by the ~~commission~~ department. If two or more licenses or permits are issued to the same person or corporation, they shall be on one and the same blank when possible and practicable.

SECTION 2. AMENDMENT. Subsection 19 of section 19-02.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19. "Pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is ~~an "economic poison"~~ a "pesticide" within the meaning of chapter 19-18, and which is used in the production, storage, or transportation of raw agricultural commodities.

SECTION 3. AMENDMENT. Section 19-02.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-09. Food - Adulteration defined. A food shall be deemed to be adulterated for any of the following reasons:

1. If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health.

2. If it bears or contains any added poisonous or added deleterious substance, other than one which is:
 - a. A pesticide chemical in or on a raw agricultural commodity;
 - b. A food additive; or
 - c. A color additive which is unsafe within the meaning of subsection 1 of section 19-02.1-12.
3. If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of subsection 1 of section 19-02.1-12.
4. If it is or bears or contains, any food additive which is unsafe within the meaning of subsection 1 of section 19-02.1-12.

Provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under subsection 1 of section 19-02.1-12, and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall not, notwithstanding the provisions of section 19-02.1-12 and this subsection, be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready-to-eat, is not greater than the tolerance prescribed for the raw agricultural commodity.

5. If it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food.
6. If it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health.
7. If it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse.
8. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.
9. If any valuable constituent has been in whole or in part omitted or abstracted therefrom.
10. If any substance has been substituted wholly or in part therefor.
11. If damage or inferiority has been concealed in any manner.
12. If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its

quality or strength or make it appear better or of greater value than it is.

13. If it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, harmless natural wax not in excess of four-tenths of one percent, harmless natural gum, and pectin; provided, that this subsection shall not apply to any confectionery by reason of its containing less than one-half of one percent by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances has partially or completely imbedded therein any non-nutritive object. This subsection does not apply in the case of any non-nutritive object if, in the judgment of the department as provided by rules, the object is of practical functional value to the confectionery product and would not render the product injurious or hazardous to health. This subsection does not apply to any confectionery, by reason of its containing less than one-half of one percent by volume of alcohol derived solely from the use of flavoring extracts. This subsection does not apply to a non-nutritive substance that is in or on confectionery by reason of its use for some practical functional purpose in the manufacture, packaging, or storage of such confectionery if the use of the substance does not promote deception of the consumer or otherwise result in adulteration or misbranding in violation of any provision of this chapter. To avoid or resolve uncertainty as to the application of this subsection, the department may issue rules allowing or prohibiting use of particular non-nutritive substances.
14. If it is or bears or contains any color additive which is unsafe within the meaning of subsection 1 of section 19-02.1-12.
15. If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to federal law.

SECTION 4. Two new subsections to section 19-02.1-10 of the North Dakota Century Code are hereby created and enacted to read as follows:

If it is a raw agricultural commodity that is the produce of the soil, bearing or containing a pesticide chemical applied after harvest, unless the shipping container of the commodity bears labeling that declares the presence of the chemical in or on the commodity and the common or usual name and the function of the chemical. No such declaration is required while the commodity, having been removed from the shipping container, is being held or displayed for sale at retail out of the container in accordance with the custom of the trade.

If its packaging or labeling is in violation of an applicable regulation issued under section 3 or 4 of the Poison Prevention Packaging Act of 1970.

SECTION 5. AMENDMENT. Section 19-02.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-02.1-11. Emergency permit control. Whenever the department finds after investigation that the distribution in the state of North Dakota of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that such injurious nature cannot be adequately determined after such articles have entered commerce, it then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packaging, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the department as provided by such regulations.

The state laboratories director department is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the state laboratories director department shall, immediately after prompt hearing and inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued, or as amended.

Any officer or employee duly designated by the state laboratories director department shall have access to any factory or establishment, the operator of which holds a permit from the department for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be grounds for suspension of the permit until such access is freely given by the operator.

SECTION 6. Two new subsections to section 19-02.1-14 of the North Dakota Century Code are hereby created and enacted to read as follows:

If it is a device and it has an established name, unless its label bears, to the exclusion of any other nonproprietary name, its established name, as defined in subsection 6, prominently printed in type at least half as large as that used thereon for any proprietary name or designation for the device, except that to the extent compliance with the requirements of this subsection is impracticable, exemptions will be established by rules adopted by the department. As used in this subsection the term "established name" with respect to a device means:

- a. The applicable official name of the device designated pursuant to federal law.
- b. If there is no official name of the device designated pursuant to federal law and the device is an article recognized in an official compendium, then the official title of the device in the compendium.
- c. If neither subdivision a nor subdivision b applies, then any common or usual name of the device.

If it is a device subject to a performance standard established under federal law, unless it bears labeling prescribed in the performance standard.

SECTION 7. A new subsection to section 19-02.1-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

If its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.

SECTION 8. AMENDMENT. Section 19-06.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-06.1-05. Enforcement authority. The state ~~laboratories~~ department of health and consolidated laboratories shall enforce the provisions of this chapter.

SECTION 9. AMENDMENT. Section 19-08-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-08-02. Beverage - Definition. The term "beverage" as used in this chapter ~~shall include intoxicating liquors~~ includes, carbonated and noncarbonated soda water, ginger ale, root beer, aromatic flavors, cereal or malt beverages, apple cider, tomato juice, grape juice and other fruit juices, imitations or compounds of any of these, concentrated extracts and essences from which beverages are made, mineral or spring water sold under private label, and potable water sold by a private individual, firm, or corporation for household or culinary purposes.

SECTION 10. AMENDMENT. Subsection 2 of section 19-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Department" means the state ~~laboratories~~ department of health and consolidated laboratories.

SECTION 11. AMENDMENT. Section 19-10-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-10-16. Department may prohibit sale of certain gasolines or motor fuels. The department may prohibit the sale of any so-called "gasoline improver" or motor fuel dope, oil additive, and of any gasoline mixed or compounded with any other chemical, substance, or solution which may be detrimental to the public health, injurious to internal combustion engines, or concerning which unsubstantiated claims are made. However, it may not prohibit the sale of any material, substance, or solution which has been favorably reported on by the United States bureau of standards or by the surgeon general or bureau of public health of the United States.

SECTION 12. AMENDMENT. Section 19-16.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-16.1-01. Administration. This chapter shall be administered by the state ~~laboratories~~ department of health and consolidated laboratories, hereinafter referred to as the department.

SECTION 13. AMENDMENT. Section 19-16.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-16.1-10. Submission of formula. The department may, for the purpose of registration, require the applicant to furnish a statement of the formula of such antifreeze, unless the applicant can furnish other satisfactory evidence that such antifreeze is not adulterated or misbranded. The statement need not include inhibitor or other ingredients which total less than five percent by weight of the antifreeze. All statements of formula and other trade secrets furnished under this section shall be privileged and confidential and shall not be made public or open to the inspection of any persons, firms, associations, or corporations other than the ~~commissioner~~ department. No such statement shall be subject to subpoena nor shall the same be exhibited or disclosed before any administrative or judicial tribunal by virtue of any order or subpoena of such tribunal without the consent of the applicant furnishing such statement to the department.

SECTION 14. AMENDMENT. Section 19-17-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-17-01. Definitions. When used in this chapter, unless the context otherwise requires:

1. ~~"Commissioner"~~ means the state food commissioner and chemist of the state of North Dakota:
- ~~2.~~ "Flour" includes and ~~shall be~~ is limited to the foods commonly known in the milling and baking industries as:
 - a. White flour, also known as wheat flour or plain flour;
 - b. Bromated flour;
 - c. Self-rising flour, also known as self-rising white flour or self-rising wheat flour; and
 - d. Phosphated flour, also known as phosphated white flour or phosphated wheat flour,but excludes whole wheat flour and also excludes special flours not used for bread, roll, bun, or biscuit baking, such as specialty, cake, pancake, and pastry flours.
- ~~3.~~ 2. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.
- ~~4.~~ 3. "Rolls" includes plain white rolls and buns of the semibread dough type namely: soft rolls, such as hamburger rolls, hot dog rolls, Parker House rolls, and hard rolls, such as Vienna rolls, Kaiser rolls, but shall not include yeast-raised sweet rolls or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.
- ~~5.~~ 4. "White bread" means any bread made with flour (as defined in subsection 1) whether baked in a pan or on a hearth or screen,

which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread, and Italian bread.

SECTION 15. REPEAL. Chapter 19-11 of the North Dakota Century Code, and section 19-07-05 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 265

HOUSE BILL NO. 1298
(Representatives R. Larson, Ulmer, Gerl)
(Senators Stenehjem, Todd)

GENERIC DRUGS

AN ACT to amend and reenact subsections 3 and 4 of section 19-02.1-14.1 of the North Dakota Century Code, relating to selecting and dispensing generic drugs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 4 of section 19-02.1-14.1 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. The form for a written prescription shall have two signature lines at opposite ends of the bottom of the form. Under the line on the right side shall be clearly printed the words "dispense as written". Under the line on the left side shall be clearly printed the words "substitution permitted". The physician shall communicate his instructions to the pharmacist by signing the appropriate line. If an oral prescription for a brand name drug product is given to a pharmacist, the practitioner shall instruct the pharmacist as to whether the drug must be dispensed as prescribed or whether a therapeutically equivalent generic name drug product may be substituted in its place. If a practitioner prescribes a drug by its brand name, the pharmacist may exercise professional judgment in the economic interest of the patient by selecting a drug product with the same generic name and demonstrated therapeutical equivalency as the one prescribed for dispensing and sale to the patient unless the practitioner specifically indicates in the practitioner's own handwriting "brand necessary" on a written prescription or expressly indicates that an oral prescription is to be dispensed as communicated. The pharmacist shall note the instructions on the file copy of the prescription. A reminder legend must be placed on all prescription forms. The legend must state: "In order to require that a brand name product be dispensed, the practitioner must handwrite the words 'brand necessary'." The legend printed on the prescription form must be in at least sixteen-point uppercase print. The pharmacist shall not substitute a generic name drug product unless its price to the purchaser is less than the price of the prescribed drug product. In addition, a pharmacist shall not substitute drug products in the following dosage forms: enteric coated tablets, controlled release products, injectable suspensions other than antibiotics, suppositories containing active ingredients for which systemic absorption is necessary for therapeutic activity, and different delivery systems for aerosol and nebulizer drugs. In the event that any drug listed above is, subsequent to January 1, 1982,

determined to be therapeutically equivalent, then the previously mentioned substitution ban shall be automatically removed for that drug. The pharmacist shall inform the person receiving the drug when a prescription for a brand name drug product does not require that the prescribed drug be dispensed and of the person's right to refuse a generic name drug product selected by the pharmacist. The pharmacy file copy of every prescription shall include the brand name, if any, or the name of the manufacturer, packer, or distributor of the generic name drug dispensed. A pharmacist who selects and dispenses a therapeutically equivalent generic name drug product shall assume no greater liability for selecting the dispensed drug product than would be incurred in filling a prescription for a drug product prescribed by its generic name. The practitioner is not liable for the substitution made by a pharmacist.

4. In the case of a prescription for which a maximum allowable cost program for purposes of reimbursement has been established under title XIX of the federal Social Security Act, the following shall also apply:
 - a. If the practitioner has signed the appropriate line of a prescription instructing instructed the pharmacist to dispense as written, the words "brand necessary" must also be written on the prescription in the practitioner's own handwriting. The pharmacist may dispense a therapeutically equivalent generic name drug product if this handwritten instruction does not appear on the prescription.
 - b. If the pharmacist is instructed orally to dispense a brand name drug as prescribed, the pharmacist shall reduce the prescription to writing and shall note the instructions on the file copy of the prescription. The prescription shall then be signed by the practitioner on the appropriate line and the words "brand necessary" must also be written on the prescription in the practitioner's own handwriting.

Approved April 7, 1989
Filed April 7, 1989

CHAPTER 266

SENATE BILL NO. 2232
(Thane)

CONTROLLED SUBSTANCE SCHEDULES

AN ACT to amend and reenact subsections 3 and 5 of section 19-03.1-05, subdivision d of subsection 3 of section 19-03.1-07, subsections 4 and 8 of section 19-03.1-07, subsections 4 and 6 of section 19-03.1-09, subsections 4 and 6 of section 19-03.1-11, section 19-03.1-13, and subsection 4 of section 19-03.1-37 of the North Dakota Century Code, relating to controlled substances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 5 of section 19-03.1-05 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of ~~such~~ those isomers, esters, ethers, and salts is possible within the specific chemical designation:
 - a. Acetyl-Alpha-Methylfentanyl (N-(1-(1-methyl-2-phenethyl)-4-piperidiny)-N-phenylacetamide).
 - b. Acetylmethadol.
 - c. Allylprodine.
 - d. Alphacetylmethadol.
 - e. Alphameprodine.
 - f. Alphamethadol.
 - g. Alpha-methylfentanyl ~~(N-(1-methyl-2-(2-thienyl)ethyl-4-piperidiny)-N-phenylpropanamide)~~ (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).
 - h. Alpha-Methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidiny]-N-phenylpropanamide).
 - i. ~~Benzylfentanyl.~~
 - j. Benzethidine.
 - ~~k.~~ j. Betacetylmethadol.

- ~~i.~~ k. Beta-hydroxyfentanyl (N-(1-(2-hydroxy-2-phenethyl)-4-piperidiny1)-N-phenylpropanamide).
- ~~m.~~ l. Beta-hydroxy 3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidiny1)-N- phenylpropanamide).
- ~~n.~~ m. Betameprodine.
- ~~o.~~ n. Betamethadol.
- ~~p.~~ o. Betaprodine.
- ~~q.~~ p. Clonitazene.
- ~~r.~~ q. Dextromoramide.
- ~~s.~~ r. Diampromide.
- ~~t.~~ s. Diethylthiambutene.
- ~~u.~~ t. Difenoxin.
- ~~v.~~ u. Dimenoxadol.
- ~~w.~~ v. Dimepheptanol.
- ~~x.~~ w. Dimethylthiambutene.
- ~~y.~~ x. Dioxaphetyl butyrate.
- ~~z.~~ y. Dipipanone.
- ~~aa.~~ z. Ethylmethylthiambutene.
- ~~bb.~~ aa. Etonitazene.
- ~~cc.~~ bb. Etoxidine.
- ~~dd.~~ cc. Furethidine.
- ~~ee.~~ dd. Hydroxypethidine.
- ~~ff.~~ ee. Ketobemidone.
- ~~gg.~~ ff. Levomoramide.
- ~~hh.~~ gg. Levophenacymorphan.
- hh. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).
- ii. 3-Methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidiny1]-N-phenylpropanamide).
- jj. Morpheridine.
- kk. MPPP (1-methyl-4-phenyl-4-propionoxypiperidine).

- ~~jj.~~ ll. Noracymethadol.
~~kk.~~ mm. Norlevorphanol.
~~ll.~~ nn. Normethadone.
~~mm.~~ oo. Norpipanone.
~~nn.~~ 1-Methyl-4-Phenyl-4-Propionoxypiperidine. (MPPP).
~~pp.~~ Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide).
~~oo.~~ qq. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-Acetyloxypiperidine). (PEPAP).
~~pp.~~ Para-fluorofentanyl.
~~qq.~~ rr. Phenadoxone.
~~rr.~~ ss. Phenampromide.
~~ss.~~ tt. Phenomorphan.
~~tt.~~ uu. Phenoperidine.
~~uu.~~ vv. Piritramide.
~~vv.~~ ww. Proheptazine.
~~ww.~~ xx. Properidine.
~~xx.~~ yy. Propiram.
~~yy.~~ zz. Racemoramide.
~~aaa.~~ Thiofentanyl (N-phenyl-N-[1-(2-thienyl) ethyl-4-piperidinyl]-propanamide).
~~zz.~~ bbb. Tilidine.
~~aaa.~~ 3-methylthiofentanyl (N-(1-(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl) N-phenylpropanamide)
~~bbb.~~ Thenylfentanyl.
~~ccc.~~ Thiofentanyl (N-phenyl-N-(1-(2-thienyl)ethyl-4-piperidinyl)-propanamide).
~~ddd.~~ Trimeperidine.
5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains containing any quantity of the following hallucinogenic substances, or which contains any of its including their salts, isomers, and salts of isomers whenever the existence of such those salts, isomers, and salts of isomers is

possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical position and geometric isomers):

- a. 4-bromo-2, 5-dimethoxy-amphetamine. (Some trade or other names: 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-bromo-2, 5-DMA.)
- b. 2, 5-dimethoxy-amphetamine. (Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2, 5-DMA.)
- c. 4-methoxyamphetamine. (Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA.)
- d. 5-methoxy-3, 4methylenedioxy-amphetamine.
- e. 4-methyl-2, 5-dimethoxyamphetamine. (Some trade and other names: 4-methyl-2, 5dimethoxy-a-methylphenethylamine; ~~"DOM"~~; DOM and ~~"STP"~~ STP.)
- f. 3, 4-methylenedioxy amphetamine.
- g. 3, 4-methylenedioxymethamphetamine (MDMA).
- h. 3, 4, 5-trimethoxy amphetamine.
- ~~h-~~ i. Bufotenine. (Some trade and other names: 3-B Beta Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine.)
- ~~i-~~ j. Diethyltryptamine. (Some trade ~~and~~ or other names: N,N-Diethyltryptamine; DET.)
- ~~j-~~ k. Dimethyltryptamine. (Some trade and other names: DMT.)
- l. Hashish.
- ~~k-~~ m. Ibogaine. (Some trade and other names: 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,9-methano-5 H-pyrido (1, 2,: 1,2) azepino (5,4-b) indole; Tabernanthe iboga.)
- ~~l-~~ n. Lysergic acid diethylamide.
- ~~m-~~ o. ~~Marihuana~~ Marijuana.
- ~~n-~~ p. Mescaline.
- ~~o-~~ q. Parahexyl-~~7374-~~. (Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl.)
- ~~p-~~ r. Peyote, meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts.

- q- s. N-ethyl-3-piperidyl benzilate.
- r- t. N-methyl-3-piperidyl benzilate.
- s- u. Psilocybin.
- t- v. Psilocyn.
- u- w. Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
- (1) cis or trans tetrahydrocannabinol, and their optical isomers.
 - (2) 6 cis or trans tetrahydrocannabinol, and their optical isomers.
 - (3) 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
- u- x. Ethylamine analog of phencyclidine. (Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.)
- u- y. Pyrrolidine analog of phencyclidine. (Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCy, PHP.)
- u- z. Thiophene Analog of Phencyclidine. (Some trade or other names: (1-(1-(2-thienyl) cyclohexyl) piperidine; 2-Thienyl Analog of Phencyclidine; TPCP, TCP.)
- v- ~~3- 4-Methylenedioxymethamphetamine~~ ~~←MDMA→~~

SECTION 2. AMENDMENT. Subdivision d of subsection 3 of section 19-03.1-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof which that is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

SECTION 3. AMENDMENT. Subsections 4 and 8 of section 19-03.1-07 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including ~~its~~ their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of ~~these such~~ those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextropropoxyphene excepted:
- a. Alfentanil.
 - b. Alphaprodine.
 - c. Anileridine.
 - d. Bezitramide.
 - e. Bulk dextropropoxyphene (nondosage forms).
 - f. Carfentanil.
 - g. Dihydrocodeine.
 - ~~g~~ h. Diphenoxylate.
 - ~~h~~ i. Fentanyl.
 - ~~i~~ j. Isomethadone.
 - ~~j~~ k. Levomethorphan.
 - ~~k~~ l. Levorphanol.
 - ~~l~~ m. Metazocine.
 - ~~m~~ n. Methadone.
 - ~~n~~ o. Methadone - Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
 - ~~o~~ p. Moramide - Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.
 - ~~p~~ q. Pethidine (meperidine).
 - ~~q~~ r. Pethidine - Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
 - ~~r~~ s. Pethidine - Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
 - ~~s~~ t. Pethidine - Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
 - ~~t~~ u. Phenazocine.
 - ~~u~~ v. Priminodine.
 - ~~v~~ w. Racemethorphan.

~~w~~ x. Racemorphan.

~~x~~ y. Sufentanil.

8. Hallucinogenic substances.

a. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a ~~U.S. Food federal food and Drug Administration~~ drug administration approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b, d] pyran-1-01, or (-)-delta-9-(trans)-tetrahydrocannabinol) (THC).

b. Nabilone [another name for nabilone (\pm)-trans-3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9Hdibenzo[b,d]pyran-9-one].

SECTION 4. AMENDMENT. Subsections 4 and 6 of section 19-03.1-09 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation ~~which contains~~ containing any quantity of the following substances having a depressant effect on the central nervous system:

a. Any compound, mixture, or preparation containing:

- (1) Amobarbital;
- (2) Secobarbital;
- (3) Pentobarbital;

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

b. Any suppository dosage form containing:

- (1) Amobarbital;
- (2) Secobarbital;
- (3) Pentobarbital;

or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository.

c. Any substance ~~which contains~~ containing any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules thereof.

d. Chlorhexadol.

e. Glutethimide.

- f. Lysergic acid.
 - g. Lysergic acid amide.
 - h. Methyprylon.
 - i. Sulfondiethylmethane.
 - j. Sulfonethylmethane.
 - k. Sulfonmethane.
 - 1. Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6, 8-dihydro-1, 3, 8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrzapon.
6. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing **limited quantities of** any of the following narcotic drugs, or **any salts thereof** their salts calculated as the free anhydrous base or alkaloid, in **limited quantities as set forth below**:
- a. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
 - b. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - c. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
 - d. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - e. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
 - f. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more ingredients in recognized therapeutic amounts.
 - g. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit,

with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

- h. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

SECTION 5. AMENDMENT. Subsections 4 and 6 of section 19-03.1-11 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- 4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation ~~which contains~~ containing any quantity of the following substances, including ~~its~~ their salts, isomers, and salts of isomers whenever the existence of ~~such~~ those salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - a. Alprazolam.
 - b. Barbital.
 - c. Bromazepam.
 - d. Camazepam.
 - e. Chloral betaine.
 - f. Chloral hydrate.
 - g. Chlordiazepoxide.
 - h. Clobazam.
 - i. Clonazepam.
 - j. Clorazepate.
 - k. Clotiazepam.
 - l. Cloxazolam.
 - m. Delorazepam.
 - n. Diazepam.
 - o. Estazolam.
 - p. Ethchlorvynol.
 - q. Ethinamate.
 - r. Ethyl ~~loflazepate~~ loflazepate.
 - ~~s. Ethylloflazepate.~~
 - ~~t. s.~~ s. Fludiazepam.

u-	<u>t.</u>	Flunitrazepam.
v-	<u>u.</u>	Flurazepam.
w-	<u>v.</u>	Halazepam.
x-	<u>w.</u>	Haloxazolam.
y-	<u>x.</u>	Ketazolam.
z-	<u>y.</u>	Loprazolam.
aa-	<u>z.</u>	Lorazepam.
bb-	<u>aa.</u>	Lormetazepam.
cc-	<u>bb.</u>	Mebutamate.
dd-	<u>cc.</u>	Medazepam.
ee-	<u>dd.</u>	Meprobamate.
ff-	<u>ee.</u>	Methohexital.
gg-	<u>ff.</u>	Methylphenobarbital (mephobarbital).
hh-	<u>gg.</u>	Midazolam.
ii-	<u>hh.</u>	Nimetazepam.
jj-	<u>ii.</u>	Nitrazepam.
kk-	<u>jj.</u>	Nordiazepam.
ll-	<u>kk.</u>	Oxazepam.
mm-	<u>ll.</u>	Oxazolam.
nn-	<u>mm.</u>	Paraldehyde.
oo-	<u>nn.</u>	Petrichloral.
pp-	<u>oo.</u>	Phenobarbital.
qq-	<u>pp.</u>	Pinazepam.
rr-	<u>qq.</u>	Prazepam.
ss-	<u>rr.</u>	Quazepam.
tt-	<u>ss.</u>	Temazepam.
uu-	<u>tt.</u>	Tetrazepam.
vv-	<u>uu.</u>	Triazolam.

6. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
- a. Cathine.
 - b. Diethylpropion.
 - c. Fencamfamin.
 - d. Fenproporex.
 - ~~b-~~ e. Mazindol.
 - f. Mefenorex.
 - ~~c-~~ g. Pemoline (including organometallic complexes and chelates thereof).
 - ~~d-~~ h. Phentermine.
 - ~~e-~~ i. Pipradrol.
 - ~~f-~~ j. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).

SECTION 6. AMENDMENT. Section 19-03.1-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-13. Schedule V.

1. The controlled substances listed in this section are included in schedule V.
2. Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.
3. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing buprenorphine or its salts.
4. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone.
 - a. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

- b. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
 - c. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
 - d. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
 - e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
 - f. Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
5. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:
- a. Propyhexedrine.
 - b. Pyrovalerone.

SECTION 7. AMENDMENT. Subsection 4 of section 19-03.1-37 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. In all prosecutions under this chapter involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist, or the toxicologist's designee, or the director of the consolidated laboratories branch of the department of health and consolidated laboratories shall, or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 267

SENATE BILL NO. 2441
(Senators Stenehjem, Olson, Maxson)
(Representatives Wentz, Schneider)

DRUG OFFENSE CULPABILITY

AN ACT to amend and reenact section 19-03.1-23 of the North Dakota Century Code, relating to culpability for certain drug offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-23 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-23. Prohibited acts A - Penalties.

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance; provided, that any person whose conduct is in violation of section 12-46-24, 12-47-21, or 12-51-11 shall not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.
 - b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony.
 - c. A substance classified in schedule IV, is guilty of a class C felony.
 - d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, or possess with intent to deliver, a counterfeit substance; provided, that any person whose conduct is in violation of section 12-46-24, 12-47-21, or 12-51-11 shall not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.

- b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
3. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter; provided, that any person whose conduct is in violation of section 12-46-24, 12-47-21, or 12-51-11 shall not be prosecuted under this subsection. Any person who violates this subsection is guilty of a class C felony; except that any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana, shall be guilty of a class A misdemeanor; and any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana shall be guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle shall be guilty of a class A misdemeanor.
4. Notwithstanding the provisions of section 19-03.1-30, whenever a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 268

SENATE BILL NO. 2176
(Committee on Judiciary)
(At the request of the Attorney General)

CONTROLLED SUBSTANCE VIOLATION FORFEITURES

AN ACT to create and enact sections 19-03.1-36.1, 19-03.1-36.2, 19-03.1-36.3, 19-03.1-36.4, 19-03.1-36.5, 19-03.1-36.6, and 19-03.1-36.7 of the North Dakota Century Code, relating to forfeiture procedures; to amend and reenact subsections 1, 5, and 6 of section 19-03.1-36 of the North Dakota Century Code, relating to forfeitures; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1, 5, and 6 of section 19-03.1-36 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The following are subject to forfeiture:

- a. All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this chapter.
- b. All imitation controlled substances as defined by sections 19-03.2-01 and 19-03.2-02.
- c. All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter.
- d. All property which is used, or intended for use, as a container for property described in subdivision a, b, or c.
- e. All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in subdivision a, b, or c, but:
 - (1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter.
 - (2) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner

thereof to have been committed or omitted without his knowledge or consent.

- (3) A conveyance is not subject to forfeiture for a violation of subsection 3 of section 19-03.1-23, or subsection 3 of section 19-03.2-03.
 - (4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if they neither had knowledge of nor consented to the act or omission.
- f. All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.
 - g. All drug paraphernalia as defined in title 12.1.
 - h. All money, coin, currency, and everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter or an imitation controlled substance in violation of chapter 19-03.2, and all proceeds traceable to any violation of this chapter. The property described in this subdivision shall be forfeited in the same manner and procedure as conveyances real and personal property, assets, profits, income, proceeds, or an interest therein, acquired or derived from the unlawful purchase, attempted purchase, delivery, attempted delivery, manufacturing, or attempted manufacturing of any controlled substance or imitation controlled substance.
5. A district court shall order a seized conveyance to be forfeited upon conviction of the person arrested, upon a guilty plea, or upon the failure of a law enforcement agency to locate and arrest after one month the person who used the conveyance subject to forfeiture. When property is forfeited under this chapter the board or a law enforcement agency may:
- a. Retain it for official use or transfer the custody or ownership of any forfeited property to any federal, state, or local agency. The board shall ensure the equitable transfer of any forfeited property to the appropriate federal, state, or local law enforcement agency so as to reflect generally the contribution of that agency participating directly in any of the acts that led to the seizure or forfeiture of the property. A decision to transfer the property is not subject to review.
 - b. Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs, with any remaining proceeds to be deposited, subject to section 54-12-14, in the appropriate state, county, or city general fund. When two or more law enforcement agencies are involved in seizing a conveyance, the remaining proceeds may be divided proportionately.

- c. Require the attorney general to take custody of property and remove it for disposition in accordance with law.
- d. Forward it to the bureau for disposition.
6. Controlled substances listed in schedule I as defined in this chapter and imitation controlled substances as defined in chapter 19-03.2 that are possessed, transferred, sold, or offered for sale in violation of this chapter and drug paraphernalia as defined in chapter 12.1-31.1 are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in schedule I as defined in this chapter and imitation controlled substances as defined in chapter 19-03.2, which are seized or come into the possession of the state and drug paraphernalia as defined in chapter 12.1-31.1, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

SECTION 2. Section 19-03.1-36.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-03.1-36.1. Manner of forfeiture. Property subject to forfeiture under this chapter, other than property that may be summarily forfeited, may be forfeited by order of a district court only after:

1. A written consent to forfeiture executed by the owner of the property and all persons with a legal interest in the property to be forfeited has been filed with the court; or
2. Commencement of forfeiture proceedings.

SECTION 3. Section 19-03.1-36.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-03.1-36.2. Forfeiture proceeding as civil action - Standard of proof. Forfeiture proceedings are civil actions against the property to be forfeited and the standard of proof is a preponderance of the evidence.

SECTION 4. Section 19-03.1-36.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-03.1-36.3. Summons and complaint for forfeiture of property - Contents of complaint - Notice. When property described in subsection 1 of section 19-03.1-36 is to be forfeited, other than property described in subsection 6 of section 19-03.1-36, and in the absence of a written consent to forfeiture, forfeiture proceedings must be commenced by the filing of a summons and complaint for forfeiture of the property in the district court of the county in which the property was seized, is being held, or is located. In the case of real property, the summons and complaint must be filed in the county in which the real property, or some part of the real property, is located. The proceedings must be brought in the name of the state. The complaint must describe the property, state its location, state its present custodian, state the name of each owner if known, state the name of each party with a legal interest in the property if known or of legal record, allege the essential elements of the violation that is claimed to exist, and must conclude with a prayer to enforce the forfeiture. Notice of the forfeiture proceedings must be given to each known owner and known person with a legal interest in the property to be forfeited by serving a copy of

the summons and complaint in accordance with the North Dakota Rules of Civil Procedure. The procedure governing the proceedings, except as otherwise provided in this chapter, is the same as that prescribed for civil proceedings.

SECTION 5. Section 19-03.1-36.4 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-03.1-36.4. Answer by claimant of property - Time for filing. Within twenty days after the service of the summons and complaint for forfeiture, the owner of the property to be forfeited and any other person with a legal interest in the property may file an answer claiming an interest in that property and claiming that person's interest is not subject to forfeiture under this chapter.

SECTION 6. Section 19-03.1-36.5 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-03.1-36.5. Disposition of property if no answer filed. If at the end of twenty days after the summons and complaint have been served there is no answer filed with the court against the complaint for forfeiture, the court shall order the forfeiture and disposition of the property as prayed for in the complaint.

SECTION 7. Section 19-03.1-36.6 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-03.1-36.6. Hearing on contested forfeiture - Order releasing or forfeiting property. If an answer is filed within the time limits in this chapter, the forfeiture proceedings must be set for hearing before the court. At the hearing, the state shall establish probable cause for instituting the forfeiture action following which any owner or person with a legal interest in the property to be forfeited who has filed an answer to the complaint has the burden of proving that the property to be forfeited is not subject to forfeiture under this chapter. If the court finds that the property is not subject to forfeiture under this chapter, the court shall order the property released to the owner or other person with a legal interest in the property as that person's right, title, or interest appears. The court shall order the property forfeited if it determines that such property or an interest therein is subject to forfeiture.

SECTION 8. Section 19-03.1-36.7 of the North Dakota Century Code is hereby created and enacted to read as follows:

19-03.1-36.7. Legal interest in property. A person alleging a bona fide legal interest in property to be forfeited must establish by a preponderance of the evidence that such legal interest existed at the time of seizure or taking of custody of the property. In the case of a claimed bona fide security interest in the property, the person claiming such interest must establish by a preponderance of the evidence that the security interest in the property to be forfeited existed or was of public record at the time of seizure or taking of custody of the property.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 269

HOUSE BILL NO. 1352
(Haugen, J. DeMers, Tollefson)

ANABOLIC STEROIDS

AN ACT to create and enact a new section to chapter 19-04 of the North Dakota Century Code, relating to the distribution of anabolic steroids; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Distribution of anabolic steroids prohibited - Exception - Penalty. A person who distributes or possesses with the intent to distribute an anabolic steroid for any use in humans other than the treatment of disease under the prescription of a physician is guilty of a class B felony.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 270

HOUSE BILL NO. 1407
(Ulmer)

PETROLEUM INSPECTION, REPORTS, AND BONDS

AN ACT to amend and reenact sections 19-10-19, 19-10-20, and 19-10-21 of the North Dakota Century Code, relating to inspection fees for petroleum products in North Dakota, reporting of petroleum products, and bonds required of petroleum dealers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-10-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-10-19. Inspection fees. Every person shipping or transporting kerosene, gasoline, tractor fuel, heating oil, or diesel fuel into this state for sale or consignment or with intent to sell or consign the same, or holding any such product for sale in this state, licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquified petroleum wholesale dealer shall pay to the department tax commissioner an inspection fee of one-fortieth of a cent per gallon [3.79 liters] for each and every gallon [3.79 liters] thereof so shipped or transported into the state, or held for sale within the state. An inspection fee shall not be required for a shipment or consignment of gasoline, kerosene, tractor fuel, heating oil, or diesel fuel when the inspection fee has already been paid by another dealer of gasoline, kerosene, tractor fuel, heating oil, or diesel fuel sold or used during a calendar month except those gallons sold out-of-state or those gallons sold as original package sales as defined in chapters 57-43.1 and 57-43.2. The fee shall must accompany the monthly report required in the following section and shall be is due on the first no later than the twenty-fifth day of each calendar month for the preceding month. Such fee shall become delinquent when ten days past due The tax commissioner shall forward all money collected under this section to the state treasurer monthly, and the state treasurer shall place the money in the general fund of the state. The provisions of chapters 57-43.1 and 57-43.2 pertaining to the administration of motor vehicle fuel and special fuels taxes not in conflict with the provisions of this chapter govern the administration of the inspection fee levied by this chapter.

SECTION 2. AMENDMENT. Section 19-10-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-10-20. Report to ~~department~~ tax commissioner of petroleum products - Contents. On the first No later than the twenty-fifth day of each calendar month, every receiver or consignee of any gasoline, kerosene, tractor fuel, heating oil, or diesel fuel shall person licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquified petroleum wholesale dealer shall send to the department tax commissioner a correct report of all shipments, consignments, or receipts purchases and sales of gasoline,

kerosene, tractor fuel, heating oil, or diesel fuel during the preceding month. The report shall must include the following:

- 1- ~~The number of gallons [liters] of gasoline, kerosene, tractor fuel, heating oil, and diesel fuel received.~~
- 2- ~~The grade or class of each shipment or consignment.~~
- 3- ~~The date received.~~
- 4- ~~The name of the consignor.~~
- 5- ~~The name of the person, firm, or corporation transporting or delivering the petroleum products to the consignee the same information as required in chapters 57-43.1 and 57-43.2 for motor vehicle fuel and special fuels tax collection purposes.~~

Failure to send such the report and the inspection fee required by the preceding section to the department shall constitute tax commissioner constitutes a violation of the provisions of this chapter.

SECTION 3. AMENDMENT. Section 19-10-21 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-10-21. Bond may be required of dealer in petroleum products. The department tax commissioner may require any person importing gasoline, kerosene, tractor fuel, heating oil, or diesel fuel for sale or consignment within this state or in possession of any such petroleum products with intent to sell the same, to deposit with the department licensed by the tax commissioner as a motor vehicle fuel, special fuels, or liquefied petroleum wholesale dealer, to furnish a surety bond payable to the state of North Dakota in the penal sum of five hundred dollars, or in twice the amount of inspection fees due for any calendar month, whichever amount is the greater, guaranteeing to the state true reports of receipts purchases and sales of gasoline, kerosene, tractor fuel, heating oil, and diesel fuel and the payment of all inspection fees provided for in this chapter. The bond shall be approved as to its sufficiency by the department The tax commissioner shall determine the sufficiency of the bond. A single bond may cover dealing in one or all of the petroleum products mentioned in this chapter. When any inspection fee is not paid within twenty days after it has become delinquent, the person bonding the delinquent may be called upon to make good upon the bond for such delinquent fees.

Approved April 3, 1989
Filed April 3, 1989

CHAPTER 271

SENATE BILL NO. 2492
(Mutch, Vosper)

ABOVEGROUND PETROLEUM TANKS

AN ACT to create and enact a new section to chapter 19-10 of the North Dakota Century Code, relating to aboveground storage tanks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Aboveground storage tanks permitted - Limitations. Subject to local zoning ordinances, a business selling petroleum products at retail may utilize aboveground tanks with a maximum capacity not exceeding nineteen thousand gallons [71922.6 liters] for the storage of petroleum products. No business may use more than five aboveground storage tanks at one location.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 272

SENATE BILL NO. 2170
(Committee on Agriculture)
(At the request of the State Department of Health
and Consolidated Laboratories)

PESTICIDE REGISTRATION AND SALE

AN ACT to amend and reenact sections 19-18-02, 19-18-03, 19-18-04, 19-18-05, 19-18-06, 19-18-06.1, 19-18-07, 19-18-08, 19-18-09, 19-18-10, and 19-18-11 of the North Dakota Century Code, relating to the registration and sale of pesticides.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 19-18-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-02. Definitions. For the purposes of this chapter, unless the context or subject matter otherwise requires:

1. "Active ingredient" means:
 - a. In the case of ~~an economic poison~~ a pesticide other than a plant regulator, defoliant, or desiccant, any ingredient which will prevent, destroy, repel, or mitigate ~~insects, fungi, rodents, weeds, or other~~ pests.
 - b. In the case of a plant regulator, any ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the ~~produce~~ product thereof.
 - c. In the case of a defoliant, any ingredient which will cause the leaves or foliage to drop from a plant.
 - d. In the case of a desiccant, any ingredient which will artificially accelerate the drying of plant tissue.
2. "Adulterated" applies to any ~~economic poison~~ pesticide if its strength or purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the ~~article~~ pesticide, or if any valuable constituent of the ~~article~~ pesticide has been wholly or in part abstracted.
3. "Antidote" means the most practical immediate treatment in case of poisoning and includes first aid treatment.

* NOTE: Section 19-18-02 was also amended by section 19 of Senate Bill No. 2005, chapter 34.

4. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant with or without causing abscission.
5. "Department" means the state department of health and consolidated laboratories.
6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissues.
- ~~6-~~ 7. "Device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or weeds, or such other pests as may be designated by the department, pests but not including equipment used for the application of economic poisons pesticides when sold separately therefrom, or rodent traps.
- ~~7-~~ 7. "Economic poison" means any substance intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, snails, slugs, fungi, weeds, or other forms of plant or animal life or viruses, bacteria, or other micro-organisms, and any substance intended for use as a plant regulator, defoliant, or desiccant.
8. "Environment" means air, water, land and all plants and man and other animals living therein, and the interrelationships which exist among these.
9. "Federal Act" means the Federal Insecticide, Fungicide, and Rodenticide Act.
10. "Fungi" means all non-chlorophyll-bearing thallophytes, that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals, and those on or in processed food, beverages, or pharmaceuticals.
- ~~9-~~ 11. "Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.
- ~~10-~~ 12. "Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.
- ~~11-~~ 13. "Inert ingredient" means an ingredient which is not an active ingredient.
- ~~12-~~ 14. "Ingredient statement" means:
 - a. A statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison pesticide; or
 - b. A statement of the name of all active ingredients in the order of their predominance in the product, together with the name of each and total percentage of the inert ingredients, if there be, in the economic poison pesticide, except subdivision a shall apply if the preparation is highly toxic to man,

determined as provided in section 19-18-05, and in addition to subsections 1 and 2 of section 19-18-05. In case the economic poison pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

- ~~+3-~~ 15. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class Insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.
- ~~+4-~~ 16. "Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.
- ~~+5-~~ 17. "Label" means the written, printed, or graphic matter on, or attached to, the economic poison pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device any of its containers or wrappers.
- ~~+6-~~ 18. "Labeling" means all labels and other written, printed, or graphic matter:
- a. Upon the economic poison pesticide or device or any of its containers or wrappers;
 - b. Accompanying the economic poison pesticide or device at any time;
 - c. To which reference is made on the label or in literature accompanying the economic poison pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the environmental protection agency, the United States department of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the fields of economic poisons pesticides.
- ~~+7-~~ 19. "Misbranded" applies:
- a. To any economic poison pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
 - b. To any economic poison pesticide:
 - (1) If it is an imitation of or is offered for sale under the name of another economic poison pesticide;

- (2) If its labeling bears any reference to registration under this chapter;
- (3) If the labeling accompanying it does not contain instructions directions for use which are necessary and, if complied with, adequate for the protection of the public to protect health and the environment;
- (4) If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to prevent injury to living man and other vertebrate animals protect health and the environment;
- (5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase; except that a pesticide is not misbranded under this subsection if:
 - (a) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and
 - (b) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the department.
- (6) The labeling does not contain a statement of the use classification under which the product is registered;
- (7) There is not affixed to its container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing:
 - (a) The name and address of the producer, registrant, or person for whom produced;
 - (b) The name, brand, or trademark under which the pesticide is sold;
 - (c) The net weight or measure of the content;
 - (d) When required by regulation of the department to effectuate the purposes of this chapter, the registration number assigned to the pesticide under this chapter, and the use classification.
- (8) The pesticide contains any substance or substances in quantities highly toxic to man, unless the label bears, in addition to any other matter required by this chapter:

- (a) The skull and crossbones;
 - (b) The word "poison" prominently in red on a background of distinctly contrasting color; and
 - (c) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.
- ~~66~~ (9) If any word, statement, or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- ~~67~~ (10) If in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it shall be injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying such ~~economic poison~~ pesticide; or
- ~~68~~ (11) If a plant regulator, defoliant, or desiccant when used as directed shall be injurious to man or other vertebrate animals, or the vegetation to which it is applied; provided, that physical or physiological effect on plants or parts thereof shall not be deemed injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with label claims and recommendations.
- ~~18-~~ 20. "Nematocide" means any substance intended to prevent, destroy, repel, or mitigate nematodes.
- ~~19-~~ 21. "Nematode" means any of the nonsegmented roundworms harmful to agricultural plants.
- ~~20-~~ 22. "Person" means any individual, partnership, association, corporation, or organized group of persons whether incorporated or not.
- ~~21-~~ 23. "Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life, viruses, bacteria, or other micro-organisms except viruses, bacteria, or other micro-organisms on or in living man or other living animals.
24. "Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pests and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
- ~~22-~~ 25. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of ornamental or crop plants or the produce thereof, but shall not

include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments. The term "plant regulator" does not include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic and nonpoisonous in the undiluted packaged concentration.

~~26.~~ "Protect health and environment" means protection against any unreasonable adverse affects on the environment.

~~23- 27.~~ "Registrant" means the person registering any ~~economic poison~~ pesticide pursuant to the provisions of this chapter.

~~24- 28.~~ "Restricted use pesticides" means any pesticide which the department has found and determined under the provisions of this chapter to be injurious to persons, ~~pollinating~~ beneficial insects, animals, crops, or ~~lands in addition to the environment other than~~ the pests it is intended to repel, destroy, control, or mitigate.

~~25- 29.~~ "Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the department shall declare to be a pest.

~~26- 30.~~ "Snails or slugs" include all harmful agricultural mollusks.

~~31.~~ "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the ~~economic, social, and environmental costs and benefits of the use of any pesticide.~~

~~27- 32.~~ "Weed" means any plant which grows where not wanted.

SECTION 2. AMENDMENT. Section 19-18-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-03. Prohibited acts. No person ~~shall may~~ distribute, sell, or offer for sale within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:

1. Any ~~economic poison~~ pesticide which has not been registered pursuant to the provisions of section 19-18-04, or any ~~economic poison~~ pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of ~~an economic poison a pesticide~~ differs from its composition as represented in connection with its registration; provided, that in the discretion of the department, a change in the labeling or formula of ~~an economic poison a pesticide~~ may be made within a registration period without requiring reregistration of the product.
2. Any ~~economic poison~~ pesticide unless it is in the registrant's or the manufacturer's unbroken immediate container, or in a container

repackaged by a facility or person with a federal environmental protection agency issued establishment number, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required labeling information on the immediate container cannot be clearly read: ~~a label bearing:~~

- ~~a. The name and address of the manufacturer, registrant, or person for whom manufactured;~~
- ~~b. The name, brand, or trademark under which said article is sold; and~~
- ~~c. The net weight or measure of the content subject, however, to such reasonable variations as the department may permit.~~

~~3. Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 19-18-05, unless the label shall bear, in addition to any other matter required by this chapter:~~

- ~~a. The skull and crossbones;~~
- ~~b. The word "poison" prominently, in red, on a background of distinctly contrasting color; and~~
- ~~c. A statement of an antidote for the economic poison.~~

~~4. 3. The economic poison pesticide commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this chapter, or any other white powder economic poison pesticide which the department, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, by regulation, shall require to be distinctly colored or discolored; unless it has been so colored or discolored. The department may exempt any economic poison pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if the department determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.~~

~~5. 4. Any economic poison pesticide which is adulterated or misbranded, or any device which is misbranded.~~

~~5. No person shall detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this chapter or regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison a pesticide in a manner that may defeat the purpose of this chapter.~~

~~6. No person shall use for the person's own advantage or reveal other than in response to a proper subpoena, except to a physician or~~

other qualified person for use in the preparation of an antidote, any information relative to the formula of any product acquired by authority of **subsection 4** this chapter.

* SECTION 3. AMENDMENT. Section 19-18-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-04. Registration - Fees. Any person before selling or offering for sale any ~~economic poison~~ pesticide for use within this state shall file annually with the department an application for registration of such ~~economic poison~~ pesticide. The application must:

1. Give the name and address of each manufacturer or distributor.
2. Give the name and brand, ~~if any,~~ of each product registered, together with an ingredient statement of each product registered in accordance with the provisions of ~~subsection 13 of section 19-18-02,~~ and accompanying each registration application there shall be filed with the department a label of each product so registered. If the department finds that the application conforms to law, the department shall issue to the applicant a certificate of registration of the product. If after public hearing before the department the application is denied, the product shall not be offered for sale.
3. Be accompanied by a current label of each product so registered.
4. Be accompanied by an inspection fee of twenty-five dollars for each product. But in cases where the registration fees have been paid by the manufacturer, jobber, or any person, as required by this section, then in that event nothing in this section shall be construed as applying to retail dealers selling economic poisons pesticides. At the close of each calendar month, the department shall transmit to the state treasurer all moneys received for such licenses. The state treasurer shall credit such moneys to the general fund of the state.
5. Be accompanied by a material safety data sheet.

The department may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the department finds that the application conforms to law, the department shall issue to the applicant a certificate of registration of the product. If after public hearing before the department the application is denied, the product may not be offered for sale.

Each registration expires on the thirty-first of December following its issuance. A certificate of registration may not be issued for a term longer than one year, and is not transferable from one person to another, or from the ownership to whom issued to another ownership, or from one place to another place or location. A penalty of fifty percent of the license or registration fee shall be imposed if the license or certificate of registration is not applied for on or before January first of each year, within the same month such ~~economic poisons~~ pesticides are first manufactured or sold within this state.

* NOTE: Section 19-18-04 was also amended by section 11 of Senate Bill No. 2056, chapter 69.

SECTION 4. AMENDMENT. Section 19-18-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-05. Determinations - Rules and regulations - Uniformity. The department is authorized, after opportunity for a hearing:

1. To declare as a pest any form of plant or animal life or virus which is injurious to plants, men, domestic animals, articles, or substances.
2. To determine whether economic poisons pesticides are highly toxic to man and whether the use thereof should be restricted.
3. To determine standards of coloring or discoloring for economic poisons pesticides, and to subject economic poisons pesticides to the requirements of subsection 4 3 of section 19-18-03.

The department may adopt appropriate rules and regulations pursuant to chapter 28-32 for carrying out the provisions of this chapter, including rules and regulations providing for the collection and examination of samples of economic poisons pesticides or devices, and also may adopt such regulations, applicable to and in conformity with the primary standards established by this chapter, as have been or may be prescribed by the United States environmental protection agency with respect to economic poisons pesticides in order that there may be uniformity between the requirements of the several states and the federal government.

SECTION 5. AMENDMENT. Section 19-18-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-06. Enforcement. The examination of economic poisons pesticides or devices shall be made under the direction of the department for the purpose of determining whether they comply with the requirements of this chapter. If it shall appear from such examination that an economic poison a pesticide or device fails to comply with the provisions of this chapter, and the department contemplates instituting criminal proceedings against any person, the department shall cause appropriate notice to be given to such person. Any person so notified shall be given an opportunity to present their views, either orally or in writing, with regard to such contemplated proceedings and if thereafter in the opinion of the department it shall appear that the provisions of the chapter have been violated by such person, then the department shall refer the facts to the state's attorney for the county in which the violation shall have occurred with a copy of the results of the analysis or the examination of such article. Nothing in this chapter shall be construed as requiring the department to report for prosecution or for the institution of libel proceedings minor violations of the chapter whenever the department believes that the public interests will be best served by a suitable notice of warning in writing. Each state's attorney to whom any such violation is reported shall cause appropriate proceedings to be instituted and prosecuted in the proper court of jurisdiction without delay. The department, by publication in such manner as the department may prescribe, shall give notice of all judgments entered in actions instituted under the authority of this chapter.

SECTION 6. AMENDMENT. Section 19-18-06.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-06.1. "Stop-sale" orders. The department may issue and enforce a stop-sale order to the owner or custodian of any ~~economic poison~~ pesticide when the department finds that the product is being offered for sale in violation of the provisions of this chapter, and the order shall direct that the product be held at a designated place until released in writing by the department. The owner or custodian of such product shall have the right to petition a court of competent jurisdiction in the county where the product is found for an order releasing the product for sale in accordance with the findings of the court.

SECTION 7. AMENDMENT. Section 19-18-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-07. Exemptions. The penalties provided for violations of section 19-18-03 shall not apply to:

1. Any carrier while lawfully engaged in transporting ~~an economic poison~~ a pesticide within this state, if such carrier, upon request, shall permit the department to copy all records showing the transactions in and movement of the articles.
2. Public officials of this state and the federal government engaged in the performance of their official duties.
3. The manufacturer or shipper of ~~an economic poison~~ a pesticide for experimental use only:
 - a. By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of ~~economic poisons~~ pesticides; or
 - b. By others if the ~~economic poison~~ pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only - not to be sold", together with the manufacturer's name and address. If a written permit has been obtained from the department, ~~economic poisons~~ pesticides may be sold for experiment purposes subject to such restrictions and conditions as may be set forth in the permit.

No article shall be deemed in violation of this chapter when intended solely for export to a foreign country, and when prepared or packed according to the specifications or directions of the purchaser. If not so exported all the provisions of this chapter shall apply.

SECTION 8. AMENDMENT. Section 19-18-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-08. Penalties. Any person violating any provision of this chapter shall be guilty of an infraction. In any case where a registrant was issued a warning by the ~~commissioner~~ department pursuant to the provisions of this chapter, such registrant shall upon violating any provision of this chapter other than subsection 1 of section 19-18-03 be guilty of a class A misdemeanor, and the registration of the article with reference to which the violation occurred shall terminate automatically. ~~An article~~ A pesticide the registration of which has been terminated may not again be registered unless the ~~article~~ pesticide, its labeling, and other material required to be

submitted appear to the commissioner department to comply with all the requirements of this chapter.

SECTION 9. AMENDMENT. Section 19-18-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-09. Seizures. Any economic poison pesticide or device that is distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state shall be liable to be proceeded against in any proper court of jurisdiction in any county of the state where it may be found and seized for confiscation by process of libel for condemnation:

1. In the case of an economic poison a pesticide:
 - a. If it is adulterated or misbranded;
 - b. If it has not been registered under the provisions of section 19-18-04;
 - c. If it fails to bear on its label the information required by this chapter;
 - d. If it is a white powder economic poison pesticide and is not colored as required under this chapter.
2. In the case of a device, if it is misbranded. If the article pesticide is condemned, it shall, after entry of decree, be disposed of by destruction or sale as the court may direct and the proceeds, if such article pesticide is sold, less legal costs, shall be paid to the state treasurer. The article pesticide shall not be sold contrary to the provisions of this chapter. Upon payment of cost and execution and delivery of a good and sufficient bond conditioned that the article pesticide shall not be disposed of unlawfully, the court may direct that said article pesticide be delivered to the owner thereof for relabeling or reprocessing as the case may be. When a decree of condemnation is entered against the article pesticide, court costs and fees and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article pesticide.

SECTION 10. AMENDMENT. Section 19-18-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-10. Delegation of duties. All authority vested in the commissioner department by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the department as the commissioner department may from time to time designate for said purpose.

SECTION 11. AMENDMENT. Section 19-18-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-18-11. Cooperation. The commissioner department is authorized and empowered to cooperate with, and enter into agreements with, any other agency of this state or of the federal government or any other state or agency thereof for the purpose of carrying out the provisions of this chapter and securing uniformity of regulations.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 273

HOUSE BILL NO. 1476
(Dalrymple, Belter)

ANHYDROUS AMMONIA HOSES

AN ACT to create and enact two new subsections to section 19-20.2-06 of the North Dakota Century Code, relating to anhydrous ammonia transfer hose requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 19-20.2-06 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

A transfer hose must have etched, cast, or impressed on the outer coating all of the following:

- a. The words "ANHYDROUS AMMONIA".
- b. The maximum working pressure of the transfer hose.
- c. The name of the manufacturer of the hose.
- d. The date of manufacture or the expiration date of the hose.

A transfer hose cut, scraped, cracked, or weathered so that the inner white cord is visible must be replaced. A transfer hose with an expiration date printed on the hose must be replaced prior to that date. Transfer hoses without an expiration date must be replaced as follows:

- a. Rayon hoses must be replaced within two years of the date of manufacture.
- b. Nylon hoses must be replaced within four years of the date of manufacture.
- c. Steel reinforced hoses must be replaced within six years of the date of manufacture.

Notwithstanding the replacement dates determined under this subsection for transfer hoses with or without an expiration date, an additional year must be allowed for replacement of transfer hoses in order to take into account delays in the original installation of transfer hoses.

Approved April 10, 1989
Filed April 11, 1989

GAME AND FISH

CHAPTER 274

SENATE BILL NO. 2365
(D. Meyer)

HUNTING DEFINED AND PRIVATE FISH HATCHERIES

AN ACT to amend and reenact section 20.1-01-02 of the North Dakota Century Code, relating to the definition of hunt or hunting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-01-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-02. Definitions. In this title, unless the context or subject matter otherwise requires:

1. "Any part thereof" ~~and or~~ "the parts thereof" ~~shall include~~ includes the hide, horns, or hoofs of any animal specified, and the plumage, skin, and every other part of any bird specified.
2. "Associated equipment" means:
 - a. Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of such system, part, or component;
 - b. Any accessory or equipment for, or appurtenance to, a boat; and
 - c. Any marine safety article, accessory, or equipment intended for use by a person on board a boat; but
 - d. Excluding radio equipment.
3. "Big game" ~~shall include~~ means deer, moose, elk, bighorn sheep, mountain goats, and antelope.
4. "Boat" means any vessel:
 - a. Manufactured or used primarily for noncommercial use;
 - b. Leased, rented, or chartered to another for the latter's noncommercial use; or
 - c. Engaged in the carrying of six or fewer passengers.
5. "Commissioner" means the state game and fish commissioner.

6. "Confiscate" or "confiscated" means to hold subject to the order of a court of competent jurisdiction.
7. "Department" means the state game and fish department.
8. "Deputy commissioner" means the deputy state game and fish commissioner.
9. "Endangered species" means any species whose prospects of survival or recruitment within the state are in jeopardy due to any of the following factors:
 - a. The destruction, drastic modification, or severe curtailment of its habitat.
 - b. Its overutilization for scientific, commercial, or sporting purposes.
 - c. The effect on it of disease, pollution, or predation.
 - d. Other natural or manmade factors affecting its prospects of survival or recruitment within the state.
 - e. Any combination of the foregoing factors.

The term ~~shall~~ also ~~include~~ includes any species classified as endangered pursuant to the Endangered Species Act of 1973, Public Law 93-205.

10. "Established road or trail" means any public highway or road, improved or otherwise, dedicated for public ingress or egress, or any other road or trail normally used for travel but does not include temporary trails across cultivated land used for agricultural purposes.
11. "Fur-bearers" ~~shall include~~ includes mink, muskrats, weasels, wolverines, otters, martens, fishers, kit or swift foxes, beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, and red or gray foxes.
12. "Game birds" ~~shall include~~ includes all varieties of geese, brant, swans, ducks, plovers, snipes, woodcocks, grouse, sagehens, pheasants, Hungarian partridges, quails, partridges, cranes, rails, coots, wild turkeys, mourning doves, and crows.
13. "Guide" or "outfitter" means any resident who holds ~~himself~~ that person out to the public as a guide or outfitter, and who provides, for compensation, transportation, equipment, arrangement of lodging, or ~~his~~ that person's own or another's personal services for the primary purpose of assisting a person or persons to locate or catch fish or to locate, pursue, or hunt small game, big game, or fur-bearers. Nonresidents ~~shall~~ are not ~~be~~ entitled to act as guides or outfitters in this state.
14. "Gun dogs" ~~shall include~~ includes any dog used to hunt protected wildlife.

15. "Harmful wild birds" ~~shall include~~ includes blackbirds, magpies, English sparrows, and starlings.
16. "Harmless wild birds" ~~shall include~~ includes all wild birds not defined herein as "harmful wild birds" or "game birds".
17. "Hunt" or "hunting" means shooting, shooting at, pursuing, taking, attempting to take, or killing any game animals and game birds; searching for or attempting to locate or flush any game animals and game birds; luring, calling, or attempting to attract game animals and game birds; hiding for the purpose of taking or attempting to take game animals and game birds; and walking, crawling, or advancing toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds. The term does not include possessing or using photographic equipment.
18. "Manufacturer" means any person engaged in:
- a. The manufacture, construction, or assembly of boats or associated equipment.
 - b. The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.
 - c. The importation into the state for sale of boats, associated equipment, or components thereof.
- ~~18-~~ 19. "Motorboat" means any vessel propelled by machinery, whether or not ~~such the~~ such the machinery is the principal source of propulsion, ~~but shall~~. The term does not include a vessel having a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.
- ~~19-~~ 20. "Motor-driven vehicle" means any land vehicle, with or without wheels, that is propelled by any motor.
- ~~20-~~ 21. "Operate" means to navigate or otherwise use a motorboat or a vessel.
- ~~21-~~ 22. "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.
- ~~22-~~ 23. "Passenger" means every person carried on board a vessel other than:
- a. The owner or his representative.
 - b. The operator.
 - c. Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.

d. Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for ~~his~~ that person's carriage.

~~23-~~ 24. "Person" ~~shall include~~ includes every partnership, association, and corporation. No violation of this title ~~shall~~ may be excused because it was done as the agent or employee of another, nor because it was committed by or through an agent or employee of the person charged.

~~24-~~ 25. "Possession" means control, actual possession, and constructive possession of the article or thing specified.

~~25-~~ 26. "Private fish hatchery" means a body of water, whether natural or artificial, and any other facilities used, maintained, or operated by any private person, firm, or corporation for the propagation and production of fish for sale or planting in other waters. ~~The~~ Except in the case of trout, walleye, northern pike, and crappie, which may be raised in a private fish hatchery without the commissioner's approval, the commissioner may, by establishing rules and regulations rule, regulate the species of fish which may be raised in a private fish hatchery. No waters stocked by any state or federal governmental agency ~~shall~~ may be considered a private fish hatchery.

~~26-~~ 27. "Public waters" means waters to which the general public has a right to access.

~~27-~~ 28. "Resident" means any person who has actually lived within this state or maintained ~~his~~ that person's home therein for at least six months immediately preceding the date that residence is to be determined. A "nonresident" is any person who has not done so.

~~28-~~ 29. "Resident species" means any species nearly all of whose individuals in this state are located within this state for at least three-fourths of annual cycle of the species.

~~29-~~ 30. "Retrieve" means to have taken possession and made ready for transportation.

~~30-~~ 31. "Sell" and "sale" means any sale or offer to sell, or possession with intent to sell, use, or dispose of, the article or thing specified, contrary to law.

~~31-~~ 32. "Shooting preserve" or "preserve" means any privately owned or leased acreage [hectarage] on which hatchery-raised game birds are released to be hunted for a fee over an extended season.

~~32-~~ 33. "Sinkbox" or "sunken device" means a raft or any type of low floating device having a depression ~~which that~~ which affords a hunter a means of concealing ~~himself that person~~ himself below the surface of the water.

~~33-~~ 34. "Small game" ~~shall include~~ includes all game birds and tree squirrels.

- ~~34.~~ 35. "Species" ~~shall include~~ includes any subspecies of wildlife and any other group of wildlife of the same species or smaller taxa in common spatial arrangement that interbreed when mature.
- ~~35.~~ 36. "Threatened species" means any species which is likely to become an endangered species within the foreseeable future and ~~shall include~~ includes any species classified as threatened pursuant to the Endangered Species Act of 1973, Public Law 93-205.
- ~~36.~~ 37. "Undocumented vessel" means a vessel which does not have a valid marine document as a vessel of the United States.
- ~~37.~~ 38. "Vessel" means any watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
- ~~38.~~ 39. "Waterfowl" ~~shall include~~ includes all varieties of geese, brant, swans, ducks, rails, and coots.
- ~~39.~~ 40. "Waters" when not qualified means waters not open to the general public.
- ~~40.~~ 41. "Waters of the state" means all waters of this state, including boundary waters. This title ~~shall extend~~ extends to and ~~shall be~~ is in force and effect over, upon, and in all such waters.
- ~~41.~~ 42. "Wildlife" means any member of the animal kingdom including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 275

SENATE BILL NO. 2366
(D. Meyer)

GAME AND FISH VIOLATION TESTIMONY

AN ACT to repeal section 20.1-01-15 of the North Dakota Century Code, relating to joint violators testifying against other participants concerning violation of the state's game and fish laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 20.1-01-15 of the North Dakota Century Code is hereby repealed.

Approved March 22, 1989

Filed March 23, 1989

CHAPTER 276

HOUSE BILL NO. 1387
(Representative Halmrast)
(Senator Satrom)

INTERFERENCE WITH HUNTERS

AN ACT to amend and reenact section 20.1-01-31 of the North Dakota Century Code, relating to interference with rights of hunters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-01-31 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-01-31. Interference with rights of hunters. No person may intentionally interfere with the lawful taking of wildlife on public or private land by another or intentionally harass, drive, or disturb any wildlife on public or private land for the purpose of disrupting a lawful hunt. This section does not apply to any incidental interference arising from lawful activity by public or private land users or to landowners or operators interfering with hunters on land owned or operated by that individual.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 277

HOUSE BILL NO. 1084
(Committee on Natural Resources)
(At the request of the Game and Fish Department)

GAME AND FISH COMMISSIONER TERM

AN ACT to amend and reenact section 20.1-02-01 of the North Dakota Century Code, relating to the term of the game and fish commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-02-01. State game and fish commissioner - Office to be maintained - Appointment - Term - Removal. A state game and fish commissioner shall be appointed by the governor. He shall hold office for a term of ~~two~~ four years beginning on the first day of July ~~of each odd-numbered year, after the~~ governor's election and until his successor is appointed and qualified. He shall be subject to removal by the governor for cause only.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 278

HOUSE BILL NO. 1449

(Halmrast, Schindler, Murphy, Hokana, Nelson)

GAME HABITAT RESTORATION TRUST FUND

AN ACT to establish the small and big game habitat restoration trust fund; to provide for transfers from the game and fish operating fund and from the habitat restoration stamp fund; to provide a continuing appropriation of the interest generated by the fund; and to provide legislative intent regarding the small and big game habitat restoration trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Small and big game habitat restoration trust fund - Advisory committee. The small and big game habitat restoration trust fund is established to further farmer-sportsmen relations and to enhance small and big game habitat by providing funds for the leasing of private land to establish or preserve small and big game habitat, food plot development, and to carry out a private land habitat improvement program by entering into cost-sharing agreements with landowners or agencies working on private land to help defray all or a portion of their share of certain federally sponsored conservation practices considered especially beneficial to small and big game. No more than forty acres [64.76 hectares] per owner or operator may be leased under this program. No land may be purchased with small and big game habitat restoration trust fund moneys, and no funds may be used for administrative purposes. The private land habitat improvement program advisory committee shall advise the commissioner concerning expenditures from the small and big game habitat restoration trust fund. The commissioner shall provide staff services to the advisory committee. All members of the advisory committee must be residents of this state and must serve without remuneration.

SECTION 2. SMALL AND BIG GAME HABITAT RESTORATION TRUST FUND - LEGISLATIVE INTENT. The funds transferred as required in section 3 of this Act must be invested in interest-bearing accounts known as the small and big game habitat restoration trust fund. The fund is established to provide funds from the interest generated by the fund for private land small and big game habitat leasing, food plot development, and small and big game habitat cost-sharing agreements as described in section 1 of this Act. It is the intent of the legislative assembly that expenditures from the principal of the small and big game habitat restoration trust fund commence no later than December 31, 1995.

SECTION 3. TRANSFER. There is hereby authorized the transfer of \$750,000 or so much thereof as constitutes moneys generated by the habitat restoration stamp program, including the habitat restoration stamp print, the interest earned on the habitat restoration stamp program, the interest earned on any unspent habitat restoration program funds, any and all other moneys resulting from the habitat restoration stamp program, and the interest on

this money which was not placed in the habitat restoration stamp fund prior to July 1, 1987, from the game and fish operating fund to the small and big game habitat restoration trust fund. The interest generated by the fund is to be used for the purposes contained in section 1 of this Act.

SECTION 4. TRANSFER. The amount of \$100,000 must be transferred annually from the game and fish operating fund to the small and big game habitat restoration trust fund.

SECTION 5. CONTINUING APPROPRIATION. The interest earned by moneys contained in the small and big game habitat restoration trust fund is hereby appropriated as a standing and continuing appropriation for the purposes of section 1 of this Act.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the 1989 legislative assembly that the small and big game habitat restoration trust fund interest income earned during a biennium must be spent prior to the end of the succeeding biennium.

Approved April 15, 1989
Filed April 17, 1989

CHAPTER 279

HOUSE BILL NO. 1505
(Representatives Solberg, Enget)
(Senator Kinnoin)

GAME AND FISH RESTORATION LAND ACQUISITION

AN ACT to amend and reenact subsections 1 and 2 of section 20.1-02-17.1 and section 20.1-02-18.1 of the North Dakota Century Code, relating to land acquisitions for wildlife and fish restoration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 20.1-02-17.1 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The state game and fish commissioner shall submit proposed wildlife and fish restoration programs or projects and updated segments thereof involving proposed acquisitions by purchase, lease, easement, or servitude of wetlands, water, or land areas by certified mail with return receipt to the board of county commissioners of the county or counties in which the affected areas are located for the board's approval prior to agreement with and approval by the secretary of the interior.
2. The board of county commissioners of the county affected, or a designee or designees of the board, shall, within twenty-one days of receipt of an acquisition proposal, physically inspect the proposed acquisition areas. The board shall give public notice of the date, hour, and place where the public may comment on the proposed acquisitions. The notice ~~shall~~ must be published once each week for two consecutive weeks in the official newspaper of the county or counties in which the land and water areas are located. The notice ~~shall~~ must set forth the substance of the proposed action, and ~~shall~~ must include a legal description of the proposed acquisitions. The board of county commissioners shall give its approval or disapproval by certified mail with return receipt within sixty days after receipt of an acquisition proposal.

SECTION 2. AMENDMENT. Section 20.1-02-18.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-02-18.1. Federal wildlife area acquisitions - Submission to county commissioners, opportunity for public comment, and impact analysis required. The governor, the game and fish commissioner, or their designees, responsible under federal law for final approval of land, wetland, and water acquisitions by the United States department of the interior, its bureaus or agencies, for waterfowl production areas, wildlife refuges, or other wildlife or waterfowl purposes, shall submit the proposed acquisitions by certified

mail with return receipt to the board of county commissioners of the county or counties in which the land, wetland, and water areas are located for the board's recommendations.

The board of county commissioners of the county affected, or a designee or designees of the board, shall, within twenty-one days of receipt of an acquisition proposal, physically inspect the proposed acquisition areas. The board shall give public notice of the date, hour, and place where the public may comment on the proposed acquisitions. The notice ~~shall~~ must be published once each week for two successive weeks in the official newspaper of the county or counties in which the land and water areas are located. The notice ~~shall~~ must set forth the substance of the proposed action, and ~~shall~~ must include a legal description of the proposed acquisitions. The board of county commissioners shall make its recommendations by certified mail with return receipt within sixty days after receipt of an acquisition proposal.

A detailed impact analysis from the federal agency involved ~~shall~~ must be included with the acquisition proposal for board of county commissioner consideration in making recommendations. ~~Such~~ The analysis ~~shall~~ must include, ~~but shall not be limited to,~~ the recreational and wildlife impacts. In addition, the county agent of the affected county or counties shall prepare an impact analysis for board of county commissioner consideration which ~~shall~~ must include the fiscal, social, and agricultural impacts of the proposed acquisitions. The department of the interior shall reimburse the county or counties for any expenses incurred by the county agent in preparing the analysis. The analyses ~~shall~~ must also be forwarded to the office of intergovernmental assistance which shall furnish copies to all interested state agencies and political subdivisions, which agencies and political subdivisions ~~shall~~ must have thirty days to review the analyses and return their comments to the office of intergovernmental assistance. Upon expiration of the thirty-day period, all comments received by the office of intergovernmental assistance ~~shall~~ must be forwarded to the federal agency involved and to the state official or agency responsible for final acquisition approval. The federal agency may, after consideration of such comments, file a final impact analysis with the governor, the board of county commissioners, and any other state official or agency responsible for final acquisition approval.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 280

SENATE BILL NO. 2160
(Committee on Natural Resources)
(At the request of the Game and Fish Department)

FREE FISHING DAYS

AN ACT to create and enact a new subsection to section 20.1-03-04 of the North Dakota Century Code, relating to when fishing licenses are not required of residents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 20.1-03-04 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Residents may fish without a resident fishing license or trout and salmon license stamp on free fishing days. The dates of these free fishing days may be set by proclamation by the governor.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 281

HOUSE BILL NO. 1154
(L. Hanson)

NONRESIDENT FUR-BEARER AND NONGAME HUNTING LICENSE FEES

AN ACT to create and enact a new subsection to section 20.1-03-12 of the North Dakota Century Code, relating to fees for nonresident fur-bearer and nongame hunting licenses; and to amend and reenact subsections 2 and 4 of section 20.1-03-07 of the North Dakota Century Code, relating to nonresidents taking fur-bearers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 4 of section 20.1-03-07 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. Trap, catch, attempt to catch, take, or kill any protected fur-bearing animal except that nonresidents holding a valid nonresident fur-bearer and nongame hunting license may hunt only fox and coyote.
4. Hunt, catch, take, or kill any unprotected bird or animal without having a nonresident nongame hunting license or nonresident fur-bearer and nongame hunting license.

SECTION 2. A new subsection to section 20.1-03-12 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

For a nonresident fur-bearer and nongame hunting license, twenty-five dollars.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 282

SENATE BILL NO. 2539

(O'Connell)

(Approved by the Committee on Delayed Bills)

NONRESIDENT MINOR UNLICENSED FISHING

AN ACT to amend and reenact section 20.1-03-08 of the North Dakota Century Code, relating to nonresident fishing licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-03-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-03-08. When licenses to fish not required of nonresident. Subject to other provisions of this title, any nonresident under the age of ~~twelve~~ sixteen years may fish without a nonresident fishing license if accompanied by an adult possessing a valid fishing license. Any nonresident may fish in the waters of a private fish hatchery without a nonresident fishing license.

Approved April 28, 1989

Filed April 28, 1989

CHAPTER 283

HOUSE BILL NO. 1203

(Committee on Natural Resources)

(At the request of the Office of Management and Budget)

NONRESIDENT SHORT-TERM UPLAND GAME LICENSES

AN ACT to create and enact a new subsection to section 20.1-03-12 of the North Dakota Century Code, relating to the creation of a special three-day hunting license for nonresident upland game hunters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 20.1-03-12 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

For a nonresident short-term three-day small game hunting license, issued between November fifteenth and the close of the upland game hunting season, thirty dollars.

Approved March 9, 1989

Filed March 9, 1989

CHAPTER 284

SENATE BILL NO. 2045
(Legislative Council)
(Interim Judicial Process Committee)

AUDITOR'S GAME AND FISH LICENSE FEES

AN ACT to amend and reenact section 20.1-03-17 of the North Dakota Century Code, relating to fees for issuing game and fish licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 20.1-03-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-03-17. Issuance of licenses - Who to issue - County auditor may appoint agents to receive service fees - Disposition of proceeds. All hunting, fur-bearer, fishing, and taxidermists' licenses ~~shall~~ must be issued by county auditors, the commissioner, deputy commissioner, and bonded game wardens. The deputy commissioner and each bonded game warden shall send the commissioner all license fees. For each license the county auditor issues, the county auditor shall collect the authorized charges and record them in the county auditor's record of cash received. The county auditor shall retain, as compensation, twenty-five cents for the issuance of each of the first one thousand resident hunting, fishing, or fur-bearer licenses issued each year and fifteen cents for the issuance of each resident hunting, fishing, or fur-bearer license issued in excess of the first one thousand licenses issued each year; one dollar for the issuance of each nonresident hunting or fur-bearer license; twenty-five cents for the issuance of each nonresident fishing license; and ten cents for the issuance of each nonresident general game license.

The county auditor may appoint agents to distribute hunting and fishing licenses or stamps. The agents may charge purchasers a service fee of fifty cents for each license. Service fees ~~shall~~ may be retained by the agent. The remainder of the license fees ~~shall~~ must be returned to the county auditor, for deposit with the county treasurer, at least once each month, and not later than three days after the close of the month. Deposits are to be accompanied by a report showing the amounts received from the sale of each type of license, the amount retained, and the net amounts deposited. The county treasurer shall credit the fees so deposited to a separate account and shall hold the fees, subject to warrant for payment thereof drawn by the county auditor in favor of the commissioner. The commissioner shall deposit all license or stamp fees received with the state treasurer to be credited to the game and fish fund.

Approved April 6, 1989
Filed April 7, 1989

* NOTE: Section 20.1-03-17 was also amended by section 1 of Senate Bill No. 2046, chapter 285.

CHAPTER 285

SENATE BILL NO. 2046
(Legislative Council)
(Interim Judicial Process Committee)

GAME AND FISH LICENSE AGENTS BONDS

AN ACT to create and enact a new section to chapter 26.1-21 of the North Dakota Century Code, relating to the state bonding fund; and to amend and reenact sections 20.1-03-17 and 20.1-03-20 of the North Dakota Century Code, relating to bonds of county auditors and agents appointed by county auditors to distribute hunting and fishing licenses or stamps.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 20.1-03-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-03-17. Issuance of licenses - Who to issue - County auditor may appoint agents to receive service fees - Disposition of proceeds. All hunting, fur-bearer, fishing, and taxidermists' licenses ~~shall~~ must be issued by county auditors, the commissioner, deputy commissioner, and bonded game wardens. The deputy commissioner and each bonded game warden shall send the commissioner all license fees. For each license the county auditor issues, the county auditor shall collect the authorized charges and record them in the county auditor's record of cash received. The county auditor shall retain, as compensation, fifteen cents for the issuance of each resident hunting, fishing, or fur-bearer license; one dollar for the issuance of each nonresident hunting or fur-bearer license; twenty-five cents for the issuance of each nonresident fishing license; and ten cents for the issuance of each nonresident general game license.

The county auditor may appoint agents to distribute hunting and fishing licenses or stamps. The county auditor may require agents to show evidence of adequate financial security before the agents are appointed. Adequate financial security may be evidenced by a letter of credit, cash deposit, or bond. Agents may be bonded through the state bonding fund. The agents may charge purchasers a service fee of fifty cents for each license. Service fees ~~shall~~ may be retained by the agent. The remainder of the license fees ~~shall~~ must be returned to the county auditor, for deposit with the county treasurer, at least once each month, and not later than three days after the close of the month. Notwithstanding section 26.1-21-11, if a claim against the state bonding fund is not filed within sixty days of the expiration of the reporting period provided in this section, the claim is waived. Deposits are to be accompanied by a report showing the amounts received from the sale of each type of license, the amount retained, and the net amounts deposited. The county treasurer shall credit the fees so deposited to a separate account and shall hold the fees, subject to warrant for payment thereof drawn by the county auditor in favor of the commissioner. The commissioner shall deposit

* NOTE: Section 20.1-03-17 was also amended by section 1 of Senate Bill No. 2045, chapter 284.

all license or stamp fees received with the state treasurer to be credited to the game and fish fund.

SECTION 2. AMENDMENT. Section 20.1-03-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-03-20. Bonds of county auditors and agents applicable to duties imposed by ~~provisions of~~ this title. The official bond of each county auditor ~~shall apply~~ and of each agent bonded through the state bonding fund and appointed by the county auditor to distribute hunting and fishing licenses or stamps applies to all ~~the~~ duties required of ~~him~~ county auditors and agents under this title, including the liability for all moneys required to be collected or received by ~~him~~ county auditors and agents under this title for the issuance of licenses.

SECTION 3. A new section to chapter 26.1-21 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Bonds of agents appointed to distribute hunting and fishing licenses or stamps - Premiums - Determination of eligibility. The annual premium for a bond of an agent appointed by a county auditor to distribute hunting and fishing licenses or stamps pursuant to section 20.1-03-17 is ten dollars. The premium must be paid to the state treasurer. The commissioner may reduce or waive the premium if it is determined that funds received pursuant to this section are sufficient to cover potential claims on the bonds of agents appointed to distribute hunting and fishing licenses or stamps. The commissioner shall determine the conditions and qualifications of agents bonded under this section. The amount of coverage afforded under this section is limited to five thousand dollars per agent per year.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 286

HOUSE BILL NO. 1138
(Committee on Natural Resources)
(At the request of the Game and Fish Department)

COUNTY AUDITOR REPORTS TO GAME AND FISH COMMISSIONER

AN ACT to amend and reenact section 20.1-03-19 of the North Dakota Century Code, relating to reports and remittances to be made by county auditors to the game and fish commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-03-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-03-19. When reports and remittances to be made by county auditors to the commissioner. Each county auditor, ~~annually~~ on the first day of February, ~~May~~, and August of each year, ~~and November~~, and within thirty days after the close of each open season, shall make a complete report of all license sales to the commissioner on forms furnished by ~~him~~ the commissioner, accompanied by a warrant drawn on the county treasurer to cover such report.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 287

HOUSE BILL NO. 1429
(K. Thompson)

WILD TURKEY GUNS

AN ACT to amend and reenact section 20.1-04-09 of the North Dakota Century Code, relating to the taking of wild turkeys.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-04-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-04-09. Guns lawfully usable in pursuing or taking game birds - Penalty. No firearm, except a shotgun not larger in bore than ten gauge [19.69 square millimeters], fired from the shoulder, ~~shall~~ may be used to hunt or pursue game birds. No person ~~shall~~ may use a rifle, pistol, or ball cartridge to hunt or pursue game birds, or to raise or drive game birds from their resting or feeding places, or from any waters of this state. ~~Any~~ However, a person may hunt or pursue wild turkeys with rifles firing a rimfire cartridge no smaller than .22 caliber [5.59 millimeter] long rifle or with muzzleloading long guns. A person who violates this section is guilty of a class 2 noncriminal offense.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 288

HOUSE BILL NO. 1280

(Representatives Marks, W. Williams, R. Berg)
(Senators O'Connell, Todd, Krauter)

MUZZLELOADER DEER HUNTING LICENSES

AN ACT to amend and reenact section 20.1-08-04.5 of the North Dakota Century Code, relating to the hunting of deer with muzzleloading long guns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-08-04.5 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

20.1-08-04.5. Governor's proclamation concerning the hunting of deer with muzzleloading long guns. The governor shall by proclamation provide for a one-week season following the regular deer hunting season to hunt deer with muzzleloading long guns in such manner, number, places, and times as the governor prescribes. Licenses to hunt deer with muzzleloading long guns must be issued by the commissioner ~~in the order the applications for the licenses are received~~ by lottery as prescribed by the commissioner, with a maximum of ~~five~~ seven hundred licenses issued each season. As used in this section, the term "muzzleloading long gun" means any forty-five or larger caliber long gun loaded through the muzzle.

Approved March 16, 1989

Filed March 16, 1989

CHAPTER 289

SENATE BILL NO. 2314
(Senators Satrom, Dotzenrod, Nalewaja)
(Representatives Halmrast, Goetz, Jensen)

PERSONAL FLOTATION DEVICES FOR CHILDREN

AN ACT to create and enact a new section to chapter 20.1-13 of the North Dakota Century Code, relating to personal flotation devices for children on boats.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

Personal flotation devices. It is unlawful for any person to operate or to be a passenger on any vessel less than twenty-seven feet [8.2296 meters] in length unless all persons, ten years of age or younger present on the vessel, wear an appropriately sized and properly fastened coast guard-approved type I, II, or III wearable personal flotation device while the vessel is in operation. A personal flotation device is appropriately sized if it is designed to be worn by a person of similar age, size, or weight as the wearer.

Approved April 6, 1989
Filed April 7, 1989

GOVERNMENTAL FINANCE

CHAPTER 290

HOUSE BILL NO. 1457
(R. Berg, Schneider)

FARGO SCHOOL DISTRICT BONDING

AN ACT to amend and reenact subsection 7 of section 21-03-07 of the North Dakota Century Code, relating to dedication of tax levies and issuance of general obligation bonds by the Fargo school district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 7 of section 21-03-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. The governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 57-15-16, 15-51-11, or 15-51-13 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings; provided, that the initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper, and any owner of taxable property within the school district may within sixty days after publication file with the business manager of the school district a protest against the adoption of the resolution. Protests must be in writing and must describe the property which is the subject of the protest. If the governing body finds such protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the school district, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

Approved April 3, 1989
Filed April 3, 1989

* NOTE: Subsection 7 of section 21-03-07 was also amended by section 8 of House Bill No. 1477, chapter 209.

CHAPTER 291

SENATE BILL NO. 2542

(Heigaard, Satrom)

(Approved by the Committee on Delayed Bills)

POLITICAL SUBDIVISION EMERGENCY BONDING

AN ACT to create and enact a new subsection to section 21-03-07 of the North Dakota Century Code, relating to issuance of bonds by political subdivisions when emergency conditions exist; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 21-03-07 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The governing body of a municipality or other political subdivision, located at least in part within a county that is included within a disaster or emergency executive order or proclamation of the governor under chapter 37-17.1, may by resolution adopted by a two-thirds vote authorize and issue general obligation bonds of the political subdivision without an election for the purpose of providing funds to pay costs associated with the emergency condition. The political subdivision may dedicate and levy taxes for retirement of bonds under this subsection and such levies are not subject to limitations as otherwise provided by law.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 28, 1989

Filed April 28, 1989

CHAPTER 292

SENATE BILL NO. 2338
(Holmberg)

BOND ISSUANCE REQUIREMENTS

AN ACT to amend and reenact sections 21-03-14 and 21-03-30 of the North Dakota Century Code, relating to the initiation of the issuance of bonds and the sale of refunding bonds by political subdivisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-03-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-14. Bonds issued without an election. Proceedings for the issuance of bonds under this chapter, ~~where~~ if no election is required, ~~shall~~ must be instituted by a resolution of the governing body containing the facts required for an initial resolution as prescribed by section 21-03-09, ~~except that the amount, date, and maturities of the issue shall be stated specifically.~~ At or after the adoption of ~~such the~~ resolution, the governing body may proceed to sell, issue, and deliver ~~such the~~ bonds, as hereinafter provided for the sale, issuance, and delivery of bonds.

SECTION 2. AMENDMENT. Section 21-03-30 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-30. Municipal bonds - Private sale to United States or state agencies. The procedure prescribed in this chapter relative to calling for bids upon the sale of municipal bonds shall not be required in the case of bonds issued under the authorization of subdivisions b or c of subsection 7 of section 21-03-06, or in case bonds are sold to:

1. The state board of university and school lands.
2. The Bank of North Dakota.
3. The North Dakota municipal bond bank.
4. Trust funds administered by public officials.
5. The United States of America, or any agency or instrumentality thereof.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 293

HOUSE BILL NO. 1412
(Representatives Lindgren, Oban)
(Senator Waldera)

CITY AND PARK DISTRICT RECORDS

AN ACT to amend and reenact sections 21-06-05, 21-06-06, and 54-46-12 of the North Dakota Century Code, relating to city and park district records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-06-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-06-05. Documents which may be destroyed - When. After the same documents have been offered to the state archivist for preservation as archival resources, the auditor, business manager, or clerk of a school district, city, or park district may destroy, by any suitable means as determined by the governing body, their school board, its records after the same have records become five years old except the following which shall must be retained as permanent records of the school district, city, or park district:

1. Governing body's School board proceedings.
2. Receipt and expenditure journals.
3. Payroll records.

SECTION 2. AMENDMENT. Section 21-06-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-06-06. Procedure for destruction of documents. The governing body school board of any school district, city, or park district desiring to destroy any documents described in under section 21-06-05, at its first meeting in January of each year, shall procure from the auditor, business manager, or clerk of such the school district, city, or park district a list of such those documents which have been paid more than five years prior to such that time and against which the period within which an action might be commenced to determine the validity of such documents has expired, which said. The list shall must contain a full statement and description of the documents desired to be destroyed, and thereupon the school board shall check said the documents with such lists the list. If found the list is correct, the said governing body school board by resolution shall order said the documents to be destroyed and in said the resolution shall provide the manner of such destruction. The list provided for in this section shall must be filed in the office of the city auditor or business manager or clerk of the school district or park district and retained as a permanent record.

SECTION 3. AMENDMENT. Section 54-46-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-46-12. County, city, and park district records - Uniform system established by administrator. The administrator shall ~~promulgate~~ adopt rules ~~and regulations~~ in accordance with chapter 28-32 consistent with specific requirements of state law for a uniform system of cataloging, reproduction, retention, and final disposition of county, city, and park district records. Upon ~~promulgation~~ adoption of ~~such the~~ rules ~~and regulations~~ all county, city, and park district offices, departments, and agencies ~~shall be authorized to may~~ establish and maintain ~~such the~~ uniform system as prescribed by the administrator.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 294

SENATE BILL NO. 2069
(Lodoen)

PUBLIC BODIES' BOND VALIDATION

AN ACT to amend and reenact section 21-09-05 of the North Dakota Century Code, relating to the validation of bonds issued by public bodies of the state prior to July 1, 1989.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-09-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-09-05. Application of chapter. The provisions of this chapter relating to validation apply to all bonds issued and proceedings taken by any public body prior to July 1, ~~1987~~ 1989.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 295

SENATE BILL NO. 2324
(Senators Olson, D. Meyer, Langley)
(Representatives Whalen, Mertens, Dorso)

WORKERS COMPENSATION BUREAU ADMINISTRATION

AN ACT to amend and reenact sections 21-10-01, 28-32-08, subsection 1 of section 54-07-01.2, sections 65-01-02, 65-01-12, 65-02-01, 65-02-02, 65-02-05, 65-02-06, 65-02-09, 65-02-12, 65-04-11, 65-04-13, 65-04-31, 65-05-17, 65-05.1-03, 65-05.1-06, 65-08-04, 65-11-01, and 65-12-01 of the North Dakota Century Code, relating to the establishment of the director of the workers compensation bureau; and to repeal sections 65-02-03 and 65-02-04 of the North Dakota Century Code, relating to the commissioners of the workers compensation bureau.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-10-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-01. State investment board - Membership - Term - Compensation. The North Dakota state investment board consists of the governor, the state treasurer, the commissioner of university and school lands, the ~~chairperson~~ director of the workers compensation bureau, the commissioner of insurance, the executive secretary of the teachers' fund for retirement, and three members who are experienced in, and have considerable knowledge of the field of investments, and who are not otherwise employed by the state of North Dakota. The governor shall appoint the members with investment experience to three-year, two-year, and one-year terms respectively on January 31, 1989. Thereafter, the appointed members shall serve four-year terms. The appointed members are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04.

SECTION 2. AMENDMENT. Section 28-32-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-08. Specifications of any issues to be furnished by agency. Whenever an administrative agency, pursuant to authority conferred upon it by law, shall institute an investigation upon its own motion or without the filing of a specified complaint, or shall hold any hearing or make any independent investigation upon the claim or request of any person, no decision shall be made by the agency until all parties in interest shall have been furnished with a written specification of the issues which are to be considered and determined, nor until an opportunity shall have been afforded to such parties to present evidence and to be heard upon the precise issues so specified. ~~Provided, however, that the commissioners~~ The director of the ~~workmen's workers~~ workers compensation bureau may make determinations without the giving of the notice herein provided for. ~~This provision shall not be construed to relieve the commissioners of the workmen's compensation bureau~~

~~of~~ by this section, but the director is subject to the requirements of section 28-32-13 ~~of this chapter.~~

* SECTION 3. AMENDMENT. Subsection 1 of section 54-07-01.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Notwithstanding ~~the provisions of~~ sections 2-05-01, 4-18.1-04, 4-27-04, 6-01-03, 6-09.1-02, 12-55-01, 12-59-01, 15-21-17, 15-38-17, 15-39.1-05, 15-65-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-26-01, 51-10-13, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, ~~and 65-02-01,~~ all members of the following boards and commissions shall, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
 - a. The aeronautics commission.
 - b. The milk stabilization board.
 - c. The dairy promotion commission.
 - d. The state banking board.
 - e. The state credit union board.
 - f. The advisory board of directors to the Bank of North Dakota.
 - g. The board of pardons.
 - h. The state parole board.
 - i. The state board of public school education.
 - j. The teachers' professional practices commission.
 - k. The board of trustees for the teachers' fund for retirement.
 - l. The educational broadcasting council.
 - m. The state game and fish advisory board.
 - n. The health council.
 - o. The air pollution control advisory council.
 - p. The livestock sanitary board.
 - q. The administrative committee on veterans' affairs.
 - r. The governor's council on human resources.
 - s. The North Dakota trade commission.
 - t. The North Dakota council on the arts.

* NOTE: Section 54-07-01.2 was also amended by section 6 of House Bill No. 1041, chapter 241, and section 70 of Senate Bill No. 2257, chapter 69.

- u. The state historical board.
- v. The Yellowstone-Missouri-Fort Union commission.
- w. The state water commission.
- x. The state water pollution control board.
- y. ~~The workers compensation bureau.~~

* SECTION 4. AMENDMENT. Section 65-01-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-02. Definitions. Whenever used in this title:

1. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
2. "Artificial members" includes only such devices as are substitutes for, and not mere aids to, a natural part, organ, limb, or other part of the body.
3. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year.
4. "Brother" and "sister" includes a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption, but such terms shall not include a married brother or sister unless he or she actually is dependent.
5. "Bureau" means the North Dakota workers compensation bureau.
6. "Child" means a child under eighteen years of age residing in the employee's household or to whom the employee has a legal obligation of support; or a child eighteen years of age or over and physically or mentally incapable of self-support who is actually dependent upon the employee for support; or any child between eighteen and twenty-two years of age who is enrolled as a full-time student in any accredited educational institution who is actually dependent upon the employee for support. This term includes a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child, but shall not include a married child unless actually dependent.
7. "Compensable injury" means an injury by accident arising out of and in the course of employment including an injury caused by the willful act of a third person directed against an employee because of his employment, but such term shall not include an injury caused by the employee's willful intention to injure himself or to injure another, nor any injury received because of the use of narcotics or intoxicants while in the course of the employment. If an injury is due to heart attack or stroke, such heart attack or stroke must be causally related to the worker's employment, with reasonable medical certainty, and must have been precipitated by unusual stress. Such term, in addition to an injury by accident, includes:

* NOTE: Section 65-01-02 was also amended by section 74 of Senate Bill No. 2056, chapter 69, and section 1 of Senate Bill No. 2256, chapter 765.

- a. Any disease which can be fairly traceable to the employment. Ordinary diseases of life to which the general public outside of the employment is exposed shall not be compensable except where the disease follows as an incident to, and in its inception is caused by a hazard to which an employee is subjected in the course of his employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease includes impairment and effects from radiation fairly traceable to the employment. It need not have been foreseen or expected, but after it is contracted, it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.
 - b. An injury to artificial members.
8. "Director" means the director of the bureau.
9. "Disability" means inability to work as a result of a compensable injury.
- 9- 10. "Employee" means every person engaged in a hazardous employment under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, and:
- a. ~~Such~~ The term includes:
 - (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city.
 - (2) Aliens.
 - (3) Poor relief workers except such as are engaged in repaying to counties relief moneys which the counties have been compelled by statute to expend for poor relief.
 - (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person may have any claim for relief or right to compensation for any injury to such minor workman, but in the event of the award of a lump sum of compensation to such minor employee, such sum shall be paid only to the legally appointed guardian of such minor.
 - b. ~~Such~~ The term does not include:
 - (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer.
 - (2) Any person who is engaged in an illegal enterprise or occupation.

(3) The spouse or child of the employer dwelling in the household of the employer.

- c. Persons employed by subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium therefor. This subdivision may not be construed as imposing any liability upon a general contractor other than liability to the bureau for the payment of premiums which are not paid by a subcontractor or independent contractor.

~~10-~~ 11. "Employer" means:

- a. The state and all political subdivisions thereof.
- b. All public and quasi-public corporations in this state.
- c. Every person, partnership, association, and private corporation, including a public service corporation.
- d. The legal representative of any deceased employer.
- e. The receiver or trustee of any person, partnership, association, or corporation, having one or more employees as herein defined.
- f. The president, vice presidents, secretary, or treasurer of a business corporation.

~~11-~~ 12. "Employment" means employment by the state and all political subdivisions thereof, by all public and quasi-public corporations therein, and all private employments.

~~12-~~ 13. "Fairly traceable to the employment" when used to modify the term "disease" means only a disease which:

- a. Arises under conditions wherein it is apparent to the rational mind upon consideration of all the circumstances that there is a direct causal connection between the conditions under which the work is performed and the disease;
- b. Can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
- c. Can be fairly traced to the employment;
- d. However, any condition or impairment of health of a full-time paid fireman or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid fireman, resulting in total or partial disability or death is presumed

to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this subdivision, an occupational cancer is one which arises out of employment as a full-time paid fireman and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid fireman. A full-time paid fireman or law enforcement officer is not eligible for the benefit provided under this subdivision unless that full-time paid fireman or law enforcement officer has completed two years of continuous service and has successfully passed a physical examination which fails to reveal any evidence of such a condition.

- ~~+3-~~ 14. "Fund" means the North Dakota workmen's compensation fund.
- ~~+4-~~ 15. "Grandchild" and the terms defined in subsections 4 and 6 include only a person who, at the time of the death of the deceased employee, is under eighteen years of age, or if over that age, is incapable of self-support.
- ~~+5-~~ 16. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
- a. Agricultural or domestic service.
 - b. Any employment of a common carrier by railroad.
 - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
 - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
- ~~+5-1-~~ 17. "Orphan" means a child who has no lawful parent.
- ~~+6-~~ 18. "Parent" includes a stepparent and a parent by adoption.
- ~~+7-~~ 19. "Permanent impairment" means the loss of or loss of use of a member of the body and includes disfigurement resulting from an injury if such disfigurement diminishes the ability of the employee to obtain employment.
- ~~+8-~~ 20. "Premises" means that part of the employer's property upon or in which the employee is expected to perform services for his employer.
- ~~+9-~~ 21. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.

- ~~20-~~ 22. "Wages" includes the market value of board, lodging, fuel, and other advantages which can be estimated in money which the employee receives from the employer as a part of his remuneration.
- ~~21-~~ 23. "Weekly wage" means the computation best calculated to give the weekly earnings of the employee.
- ~~22-~~ 24. Any term includes the singular and plural and either or both sexes where the context so requires.

SECTION 5. AMENDMENT. Section 65-01-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-12. Attorney general to represent bureau. Upon the request of the bureau, the attorney general shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this title or for the recovery of any money due the fund or of any penalty provided for in this title, and shall defend all suits, actions, or proceedings brought against the bureau or any member thereof of its employees in his the attorney general's official capacity.

* SECTION 6. AMENDMENT. Section 65-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-01. Workmen's Workers compensation bureau - Membership - Terms of office Executive director. The North Dakota workmen's compensation bureau shall must be maintained for the administration of the provisions of this title. Such bureau shall consist of three workmen's compensation commissioners who shall be appointed by the governor. The terms of the commissioners shall be six years, and shall be arranged so that the term of one commissioner, and of only one, shall expire on the tenth day of July in each odd-numbered year. One of the commissioners shall be a representative of labor, one shall be a representative of the public, and one shall be a representative of the employers. The commissioners shall devote their entire time to the duties of the bureau, and each commissioner shall serve until his successor has been appointed and qualified. Any commissioner may be removed by the governor for cause. The governor shall appoint the director of the bureau who is subject to the supervision and direction of the governor and who shall serve at the pleasure of the governor. The appointment must be on a nonpartisan, merit basis, in accordance with chapter 54-42. The governor shall set the compensation and prescribe the duties of the director. The director may appoint the director of any division of the bureau which is established by the director. The appointment of a division director must be on a nonpartisan, merit basis.

SECTION 7. AMENDMENT. Section 65-02-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-02. Oath of office - Salary Bond. Before commencing to perform his the duties of director of the bureau, each commissioner the director shall file an oath of office in the usual form and shall be bonded by the state bonding department fund in the sum of five thousand dollars for the faithful discharge of his the director's duties as such commissioner and the proper accounting for all moneys received by him as such officer the director. Each commissioner shall receive a salary within the amount appropriated for salaries by the legislative assembly.

* NOTE: Section 65-02-01 was also amended by section 77 of Senate Bill No. 2056, chapter 69.

SECTION 8. AMENDMENT. Section 65-02-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-05. Office space for bureau - Expenditures from fund for ~~assistants~~ employees and supplies - Travel. The bureau ~~shall~~ must be provided with office space. The bureau, at the expense of the fund, shall provide all necessary equipment, supplies, stationery, and furniture, and all clerical and other help necessary to carry out the provisions of this title. The ~~members~~ employees of the bureau ~~and its assistants shall be~~ are entitled to receive from the fund for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty by motor vehicle the same rates in the same manner as other state officials. If travel is by a motor vehicle owned by the state, or by any department or political subdivision thereof, no allowance ~~shall~~ may be paid for ~~such~~ the mileage. Vouchers for travel and other administrative expenses ~~shall~~ must bear the approval of the bureau and the office of management and budget before payment is made therefor. Travel and other administrative expense payments ~~shall~~ must be made by warrant-check prepared by the office of management and budget drawn upon the state treasurer against the fund. Expenditures made under ~~the provisions~~ of this section, however, must be within the limitations designated by the legislative assembly in appropriation measures adopted from time to time.

* SECTION 9. AMENDMENT. Section 65-02-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-06. Expenditures by bureau from fund - Employment of full-time assistant attorney general authorized. The bureau may make necessary expenditures to obtain statistical and other information required for the proper enforcement of ~~the provisions~~ of this title. The salaries and compensation of the ~~members~~ director of the bureau, ~~of its secretary,~~ and of all employees of the bureau, and all other authorized expenses thereof, including the premium on the bond required of the state treasurer under ~~the provisions~~ of section 65-04-30, ~~shall~~ must be paid out of the fund. The bureau may employ as its full-time attorney a duly appointed assistant attorney general and pay from the fund the entire salary of ~~such~~ the assistant.

SECTION 10. AMENDMENT. Section 65-02-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-09. General information to public - Biennial report of bureau. The bureau, from time to time, may publish and distribute among employers and employees ~~such~~ general information as to the business transacted by the bureau as in its judgment may be useful. The ~~bureau, under the oath of at least two of its members,~~ director shall make a biennial report as prescribed by section 54-06-04 to the governor and the office of management and budget. In addition to any requirements established pursuant to section 54-06-04, the report ~~shall~~ must include:

1. A statement of the number of awards made by it.
2. A general statement of the causes of accidents leading to the injuries for which the awards were made.
3. A detailed statement of the disbursements from the fund.

* NOTE: Section 65-02-06 was also amended by section 1 of Senate Bill No. 2237, chapter 766.

4. A statement of the conditions of the various funds carried by the bureau.
5. Any other matters which the bureau wishes to call to the attention of the governor, including any recommendation for legislation or otherwise which it may have to make.

SECTION 11. AMENDMENT. Section 65-02-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-12. Hearings by one member of bureau - Order or decision approved by majority becomes that of bureau director. Any investigation, inquiry, hearing, or decision, and every order by any member of the bureau, when approved and confirmed by a majority of the members thereof, shall be the director is deemed to be the order or decision of the bureau.

SECTION 12. AMENDMENT. Section 65-04-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-11. Bureau may make examinations under oath to secure payroll information. The director, the bureau or any member thereof, or any person employed by it the bureau for that purpose, may examine under oath any employer, or any officer, agent, or employee of any employer, for the purpose of ascertaining any information which such the employer is required under any provision of this title to furnish to the bureau.

SECTION 13. AMENDMENT. Section 65-04-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-13. Books, records, and payrolls of employers subject to audit and inspection - Penalty for refusal to permit inspection. All books, records, and payrolls of the employers of the state, showing or reflecting in any way upon the amount of wage expenditure of such the employers, shall must be open always for inspection by the bureau or any of its traveling auditors, inspectors, or assistants for the purpose of ascertaining the correctness of the reports, wage expenditures, the number of men employed, and such any other information as may be necessary for the uses and purposes of the bureau in its administration of the provisions of this title. Refusal on the part of any employer to submit his the employer's books, records, and payrolls for the inspection of any member of the bureau, or of a traveling auditor, inspector, or assistant presenting written authority from the bureau, shall subject such subjects the employer to a penalty of one hundred dollars for each such offense, the same to be collected by civil action in the name of the state and paid into the fund to become a part thereof.

SECTION 14. AMENDMENT. Section 65-04-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-31. Investment of fund. Investment of the fund shall be under the supervision of the state investment board in accordance with chapter 21-10. For purposes of this section, the chairman of the bureau shall be deemed director is the official signatory for the bureau on any check, document, or other legal instrument relating to or resulting from the investment of workmen's compensation bureau funds. The chairman in the event of his absence from the office, may, in writing, delegate this authority to any other commissioner for the period of his absence. In the event that the

office of chairman is vacant, the commissioner with the longest tenure in office shall be deemed this authority during the period of such vacancy:

* SECTION 15. AMENDMENT. Section 65-05-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-17. Weekly compensation allowances for death claims. If death results from an injury under the conditions specified in section 65-05-16, the fund shall pay to the following persons, for the periods specified, a weekly compensation:

1. To the spouse or guardian of the orphaned child or children of the decedent, an amount equal to two-thirds of the weekly wage of the deceased, not to exceed two hundred ten dollars per week, until the death or remarriage of the spouse; or, in the case of a guardian, until the orphaned child or children of the decedent no longer meets the definition of child in this title. Where there is more than one orphaned child of a decedent, death benefits must be divided equally among guardians. In no case may total death benefits be less than fifty percent of the maximum weekly death benefits. In no case may total death benefits exceed one hundred ninety-seven thousand dollars as a result of any employee's death.
2. To each child of the deceased employee, the amount of seven dollars per week. The bureau, in its discretion, may make this payment directly to the child of the deceased employee or to the surviving parent or guardian of the child.

In addition to the awards payments herein, the commissioners bureau shall make an award a payment in the sum of three hundred dollars to the spouse or guardian of the orphaned child or children of the deceased and one hundred dollars for each dependent child. Where there is more than one guardian of orphaned children, the three hundred dollars must be divided equally among the guardians.

**SECTION 16. AMENDMENT. Section 65-05.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.1-03. Director of rehabilitation services - Duties. The director of rehabilitation services shall:

1. Direct the implementation of programs for individual workmen's workers compensation claimants in accordance with bureau determinations in compliance with the purpose of this chapter.
2. Cooperate, contact, and assist any government or private organization or agency or group of individuals or business or individual necessary or advantageous in carrying out the purpose of this chapter.
3. Enforce the provisions of all vocational rehabilitation contracts as provided in section 65-05.1-05.
4. Keep such records, for statistical purposes, and provide such training necessary for the bureau staff as is necessary to keep pace with future developments in the area of rehabilitation services.

* NOTE: Section 65-05-17 was also amended by section 6 of Senate Bill No. 2237, chapter 766.

** NOTE: Section 65-05.1-03 was also amended by section 84 of Senate Bill No. 2056, chapter 69.

* SECTION 17. AMENDMENT. Section 65-05.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.1-06. Rehabilitation allowance. In the event of a contract as provided in section 65-05.1-05, the bureau, in lieu of temporary total, temporary partial, and permanent total benefits may award a rehabilitation allowance to any claimant in order to effect the purpose of the contract. The rehabilitation allowance shall be limited to the amount and purpose specified in the rehabilitation contract but may not exceed an amount equal to two years' weekly compensation and dependent benefits plus twenty-five percent, except in cases of catastrophic injury in which case additional rehabilitation benefits may be awarded in the discretion of the commissioners director. Catastrophic injury is defined as an acute disabling injury rendering a worker permanently and totally disabled that requires rehabilitation services in order to return the worker to gainful employment. In the event the claimant successfully concludes the terms of the contract, additional awards, not to exceed a total of ten thousand dollars for the life of the claimant, regardless of any subsequent claim, can be made for the actual expenses of relocation or remodeling of living and business facilities as the claimant's condition may require.

** SECTION 18. AMENDMENT. Section 65-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-08-04. Agreements between states relating to conflicts of jurisdiction. The workmen's compensation bureau, through the action of a majority of the commissioners the director, shall have authority to may enter into agreements with the workmen's workers compensation agencies of other states relating to conflicts of jurisdiction where the contract of employment is in one state and the injuries are received in the other state, or where there is a dispute as to the boundaries or jurisdiction of the states and when such agreements have been executed and made public by the respective state agencies, the rights of the employee hired in such other state and injured while temporarily employed in North Dakota, or hired in North Dakota and injured while temporarily employed in another state, or where the jurisdiction is otherwise uncertain, shall be determined pursuant to such agreements and confined to the jurisdiction provided in such agreements. Where such an agreement exists, any provisions of this chapter which conflict with the provisions of that agreement shall be superseded by the provisions of that agreement.

SECTION 19. AMENDMENT. Section 65-11-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-11-01. Appointment - Term of office. The commissioners of the North Dakota workmen's compensation bureau director shall appoint a state safety engineer who shall hold office at the will of the bureau director.

SECTION 20. AMENDMENT. Section 65-12-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-12-01. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction. The commissioners of the North Dakota workmen's compensation bureau director shall appoint a chief boiler inspector and such deputy inspectors as necessary in accordance with the provisions of section

* NOTE: Section 65-05.1-06 was also repealed by section 6 of House Bill No. 1191, chapter 771.

** NOTE: Section 65-08-04 was also amended by section 92 of Senate Bill No. 2056, chapter 69.

65-02-05. The chief boiler inspector shall have jurisdiction over all boilers in this state except as otherwise provided.

SECTION 21. REPEAL. Sections 65-02-03 and 65-02-04 of the North Dakota Century Code are hereby repealed.

Approved April 28, 1989
Filed April 28, 1989

GUARANTY, INDEMNITY, AND SURETYSHIP

CHAPTER 296

HOUSE BILL NO. 1462
(R. Larson)

GUARANTEE OF DELIVERY

AN ACT to amend and reenact section 22-01-06.3 of the North Dakota Century Code, relating to a guaranty of delivery; and to repeal sections 22-01-06.1, 22-01-06.2, 22-01-06.4, and 22-01-06.5 of the North Dakota Century Code, relating to a guaranty of delivery.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 22-01-06.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

22-01-06.3. When account furnished surety or guarantor. ~~In every case in which the~~ When a manufacturer, wholesaler, or distributor ~~is furnishing~~ furnishes merchandise to any agent, salesman, or dealer whose execution of bond or obligation to ~~such~~ the manufacturer, wholesaler, or distributor has been joined in by ~~any~~ a surety or guarantor, ~~such~~ the manufacturer, wholesaler, or distributor ~~shall each month during the life of such bond or obligation~~ upon written request by the surety or guarantor, shall furnish each ~~such~~ surety or guarantor either by mail or personal delivery a statement each month during the life of the bond or obligation showing the debit and credit items incurred and made in the account between the manufacturer, wholesaler, or distributor and ~~such~~ the agent, salesman, or dealer during the immediately preceding month and the exact balance owing from the agent, salesman, or dealer thereon at the date of ~~such~~ the notice.

SECTION 2. REPEAL. Sections 22-01-06.1, 22-01-06.2, 22-01-06.4, and 22-01-06.5 of the North Dakota Century Code are hereby repealed.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 297

SENATE BILL NO. 2321
(Todd)

CONTINUING GUARANTY REVOCATION

AN ACT to amend and reenact section 22-01-14 of the North Dakota Century Code, relating to revocation of a continuing guaranty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 22-01-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

22-01-14. Revocation of continuing guaranty. A continuing guaranty may be revoked at any time by the guarantor in respect to future transactions unless there is a continuing consideration as to such transactions which ~~he~~ the guarantor does not renounce. If the contract of guaranty signed by the guarantor so states, the revocation must be in writing and delivered to the guarantee. If the contract does not so state, an oral attempt to revoke is not effective if at the time of the oral communication the guarantee requests delivery of a written revocation and confirms the request in writing.

Approved April 11, 1989
Filed April 12, 1989

HEALTH AND SAFETY

CHAPTER 298

HOUSE BILL NO. 1083

(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health and
Consolidated Laboratories)

HEALTH COUNCIL CONSTRUCTION RULES

AN ACT to amend and reenact subsection 4 of section 23-01-03 of the North Dakota Century Code, relating to the powers and duties of the state health council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 23-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Provide for the development, establishment, and enforcement of basic standards for hospitals and related medical institutions which render medical and nursing care, and for the construction and maintenance of such institutions, such standards to cover matters pertaining to sanitation, building construction, fire protection measures, nursing procedures, and preservation of medical records, ~~provided no regulation shall be made as. No rule may be adopted with respect to building construction of existing medical hospitals save in relation or related medical institutions unless the rule relates to safety factors or the hospital or related medical institution changes the scope of service in such a way that a different license is required from the department pursuant to rules adopted under chapter 23-16.~~

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 299

HOUSE BILL NO. 1537
(Representatives Goetz, Marks)
(Senators D. Meyer, Lodoen)

HEALTH DEPARTMENT RULES

AN ACT to create and enact a new section to chapter 23-01 of the North Dakota Century Code, relating to rulemaking authority of the state department of health and consolidated laboratories.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Rulemaking authority and procedure.

1. Except as provided in subsection 2, no rule which the state department of health and consolidated laboratories, hereinafter the department, adopts for the purpose of the state administering a program under the federal Clean Air Act, federal Clean Water Act, federal Safe Drinking Water Act, federal Resource Conservation and Recovery Act, federal Comprehensive Environmental Response, Compensation and Liability Act, federal Emergency Planning and Community Right to Know Act of 1986, federal Toxic Substances Control Act, or federal Atomic Energy Act of 1954, may be more stringent than corresponding federal regulations which address the same circumstances. In adopting such rules, the department may incorporate by reference corresponding federal regulations.
2. The department may adopt rules more stringent than corresponding federal regulations or adopt rules where there are no corresponding federal regulations, for the purposes described in subsection 1 of this section, only if it makes a written finding after public comment and hearing and based upon evidence in the record, that corresponding federal regulations are not adequate to protect public health and the environment of the state. Those findings must be supported by an opinion of the department referring to and evaluating the public health and environmental information and studies contained in the record which form the basis for the department's conclusions.
3. If the department, upon petition by any person affected by a rule of the department, identifies rules more stringent than federal regulations or rules where there are no corresponding federal regulations, the department shall review and revise those rules to comply with this Act within nine months of the filing of the petition.

4. All existing rules of the department remain in full force and effect after the effective date of this Act, pending department review and revision under subsection 3.
5. Any person who is issued a notice of violation, or a denial of a permit or other approval, based upon a rule of the department which is more stringent than a corresponding federal regulation or where there is no corresponding federal regulation, may assert a partial defense to that notice, or a partial challenge to that denial, on the basis and to the extent that the department's rule violates this Act by imposing requirements more stringent than corresponding federal regulations, unless the more stringent rule of the department has been adopted in compliance with this Act.
6. The provisions of this Act may not be construed so as to require the department to review and propose revisions to any existing rule regarding the collection of fees by the department in connection with the administration of any program identified in subsection 1.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 300

HOUSE BILL NO. 1359
(Representatives D. Larson, Stenehjem, Clayburgh)
(Senators Naaden, Ingstad)

RABIES CONTROL

AN ACT to amend and reenact section 23-01-18 of the North Dakota Century Code, relating to control of rabies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-01-18. State department of health and consolidated laboratories responsible for control of rabies. The state department of health and consolidated laboratories shall be responsible for the prevention and control of rabies. The department shall place its primary emphasis on human exposure cases but shall also be authorized to provide rabies vaccine for dogs and cats and may employ a veterinarian to administer such vaccine. The department shall also provide rabies vaccine for humans if requested to do so by the attending physician of the person to receive such vaccine. The department may provide rabies vaccine for individuals whose net financial resources and income are insufficient to enable them to obtain the vaccine. In addition, the department shall have the authority to quarantine, vaccinate, or exterminate any animal suspected of rabies. If requested to do so by local authorities, the department shall assist them in the prevention and control of rabies where an emergency exists.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 301

SENATE BILL NO. 2200
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of
Health and Consolidated Laboratories)

LOCAL BOARDS OF HEALTH

AN ACT to create and enact a new section to chapter 23-03, a new section to chapter 23-04, and a new section to chapter 23-14 of the North Dakota Century Code, relating to the county health officer, city health officer, and withdrawal from health districts; to amend and reenact sections 23-03-01, 23-03-02, 23-03-03, 23-03-05, 23-03-07, 23-03-08, 23-03-10, 23-04-01, 23-04-02, 23-04-03, 23-04-04, 23-04-05, 23-04-06, 23-04-08, 23-05-01, 23-05-02, 23-05-03, 23-05-04, 23-05-07, 23-05-12, 23-14-01, 23-14-01.1, 23-14-03, 23-14-04, 23-14-05, 23-14-07, 23-14-08, 23-14-09, 23-14-10, 23-14-13, and 23-14-14 of the North Dakota Century Code, relating to local boards of health; and to repeal sections 23-03-04, 23-03-06, 23-03-09, 23-03-11, 23-04-07, 23-04-09, 23-05-08, and 23-05-09 of the North Dakota Century Code, relating to local boards of health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-01. County board of health - How composed - Term of office - Qualifications. The board of county commissioners shall appoint a five member county board of health shall consist of the state's attorney, the county superintendent of schools, and the superintendent of public health. The superintendent of public health shall be learned in medicine, shall hold a license to practice medicine and surgery within this state, and shall be appointed by the board of county commissioners at its first meeting each year for a term of one year and until his successor is appointed and qualified. The five members of the county board of health must include one physician, one dentist, one business or professional person, one farmer, and one county commissioner. The initial members of the county board of health must be appointed for terms as follows: one for one year, one for two years, one for three years, one for four years, and one for five years. All subsequent appointments must be for five years. In no instance may the board be either all male or all female. Each appointee shall serve until a successor is appointed or qualified, and if a vacancy occurs, the vacancy shall be filled by appointment for the remainder of the unexpired term. Each appointee shall qualify by filing the constitutional oath of office in the office of the county auditor. In the event a county does not have a resident physician or dentist, these positions may be filled by a physician and dentist from an immediately adjacent county, or if not practical, by other licensed providers of health services who are residents in the county. Members of the board may be compensated at the rate not to exceed forty-five dollars per day and for not to exceed twenty-five days in any one year. They must be reimbursed for

expenses incurred in the manner and to the extent provided for state officers.

SECTION 2. AMENDMENT. Section 23-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-02. Officers of county board of health. The state's attorney shall act as president of the county board of health; the county superintendent shall act as vice president thereof; and the county superintendent of health shall be secretary of the board. The president shall preside at the meetings of the board and in his absence the vice president shall perform the duties of president. At the first meeting after their appointment and annually thereafter, the members of the board shall organize by electing a president, a vice president, and such other officers as they deem necessary. Upon appointment and qualification, the health officer is the secretary of the board.

SECTION 3. A new section to chapter 23-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

County health officer. The county board of health shall appoint for a term of five years a county health officer subject to removal for cause by the county board of health. The health officer must be a physician currently licensed to practice medicine in North Dakota and need not be a resident of the county when appointed. The health officer shall qualify by filing the constitutional oath of office in the manner provided for the members of the county board of health.

SECTION 4. AMENDMENT. Section 23-03-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-03. Meetings of county board of health. The county board of health shall meet at the county seat at such time within thirty days after the appointment of the county superintendent of health as he may designate. He shall give notice of the time and place of such meeting to the other members of the board at least five days prior to the meeting. Thereafter, the board shall meet at the county seat at least once in every three months.

SECTION 5. AMENDMENT. Section 23-03-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-05. Compensation of county superintendent of public health officer. The county superintendent of public health officer shall receive such compensation as the board of county commissioners health may determine.

SECTION 6. AMENDMENT. Section 23-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-07. Powers and duties of county superintendent of public health officer. The county superintendent of public health officer shall:

1. Exercise the powers of the county board of health under the supervision of such board, and of the state department of health and consolidated laboratories throughout the county outside of the corporate limits of cities.
2. Supervise the township boards of health within his county.

- ~~3-~~ Furnish, at the expense of the county board of health, to the clerk of each township and to each physician within his jurisdiction, proper blanks for reporting to him all contagious and infectious diseases, and he shall instruct such persons in the proper method of making the reports.
- ~~4-~~ Execute by agents appointed by him the duties of any township board of health in his county which neglects or refuses to perform its duties or to execute the rules, orders, or regulations of the county board of health.
- ~~5-~~ 2. Make sanitary inspections of such places as he deems advisable when he believes there is a probability that a dangerous disease health threatening condition exists within his jurisdiction, and take such action as he may deem necessary for the protection of the public health.
- ~~6-~~ Send out circulars, if he deems the same necessary, permitting the use of the long distance telephone at the expense of the county board of health in cases of emergency.
- ~~7-~~ 3. Investigate, subject to the supervisory control of the state department of health and consolidated laboratories, public water and ice supplies which are suspected of being infected contaminated, and cause them to be condemned when he finds it necessary.
- ~~8-~~ Investigate public milk supplies, whenever he deems such investigation to be necessary, and prohibit the sale of unwholesome milk and dairy products.
- ~~9-~~ Stop shipment of spoiled or unwholesome meat, the slaughtering of diseased animals, and the subsequent sale of the meat thereof.
- ~~10-~~ 4. Enforce cleanliness in schools, and inspect overcrowded, poorly ventilated, and unsanitary schoolhouses and, when necessary, report cases of unsanitary or unsafe school buildings to the county board of health for investigation as provided in section 15-47-23.
- ~~11-~~ 5. Enforce all laws, rules, and regulations relating to the preservation of the life and health of the people of the county.
- ~~12-~~ 6. Keep a record of all the proceedings of the county board of health and of his official acts.
- ~~13-~~ Keep a record of all reportable diseases occurring in his jurisdiction showing the statistical data required by the state department of health.

* SECTION 7. AMENDMENT. Section 23-03-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-08. County superintendent of health officer may quarantine - Expenses. The county superintendent of public health officer shall decide when quarantine and disinfection are necessary for the safety of the public. He may establish quarantines and perform such acts as are required for disinfection when the same is necessary, and may enforce his orders and the

* NOTE: Section 23-03-08 was also amended by section 1 of Senate Bill No. 2053, chapter 302.

orders of the county board of health in connection therewith. All expenses incurred in quarantining or disinfecting outside of incorporated cities shall be audited by the county board of health and paid out of the general fund of the county.

SECTION 8. AMENDMENT. Section 23-03-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-10. Removal of county ~~superintendent of public health officer~~. Whenever the state department of health and consolidated laboratories has reason to believe that the county ~~superintendent of public health officer~~ is failing to perform his duties, it may report the case to the county board of ~~county commissioners~~ health, which, after proper hearing at its next meeting, may declare the office vacant and may appoint another physician to such office for the remainder of the unexpired term.

SECTION 9. AMENDMENT. Section 23-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-04-01. Board of health in council cities. The board of health in a city operating under the council form of government shall be under the supervision of the state department of health and consolidated laboratories and shall consist of the following members:

1. Four aldermen appointed by the mayor at the first meeting of the city council in April of each year.
2. The city engineer.
3. The city health officer.

SECTION 10. AMENDMENT. Section 23-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-04-02. City health officer —~~Appointment; term of office; removal~~ in council cities. The mayor, at the regular meeting of the city council in April of each odd-numbered year, shall appoint as city health officer a person licensed to practice medicine and surgery within this state. Such appointment shall be subject to confirmation by the city council. The health officer shall hold his office for two years and until his successor is appointed and qualified. When the state department of health and consolidated laboratories is satisfied that the city health officer is neglecting or refusing to perform the duties of his office, it may report the case to the city council, and at the next meeting thereof, the mayor shall declare the office vacant and shall appoint another physician to fill the unexpired term.

SECTION 11. A new section to chapter 23-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

City health officer in commission cities. The board of health in a city operating under a city commission form of government shall appoint, as health officer, a person licensed to practice medicine within this state. The health officer shall hold office for two years and until a successor is appointed and qualified. When the state department of health and consolidated laboratories is satisfied that the city health officer is neglecting or refusing to perform the duties of his office, it may report the

case to the city board of health, and at the next meeting thereof, the board shall declare the office vacant and shall appoint another physician to fill the unexpired term.

SECTION 12. AMENDMENT. Section 23-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-04-03. Officers of city ~~board~~ boards of health. The board of health of a city operating under the council form of government and the board of health of a city operating under the commission form of government shall elect from its members a president ~~and a~~ vice president, and other officers they deem necessary. The city health officer shall act as secretary ~~and executive officer~~ of the board.

SECTION 13. AMENDMENT. Section 23-04-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-04-04. Time of meetings - Quorum - Duties of officers. The ~~board~~ city boards of health in a council city shall meet on the first Tuesday after the regular meeting of the city council in April and on the second Tuesday in July, October, and January in each year. Special meetings may be held at any time on the call of the president and secretary. The hour and place of all meetings shall be determined by the city health officer. A majority of the board shall constitute a quorum. The president shall preside at the meetings of the board, and in his absence, the vice president shall perform the duties of the president.

SECTION 14. AMENDMENT. Section 23-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-04-05. Powers and duties of city health officer. The health officer of a city operating under the council or commission form of government shall:

1. Keep a record of the proceedings of the city board of health-
- 2- ~~Keep a record and~~ of his official acts.
- 3- 2. Enforce within his jurisdiction the health ordinances of the city, the rules ~~and regulations~~ of the state department of health and consolidated laboratories and of the city board of health, and the health laws of the state.
- 4- ~~Instruct the physicians within his jurisdiction in the proper methods to employ in reporting contagious diseases, and furnish the necessary blanks for that purpose. The blanks shall be in the form prescribed by the state department of health.~~
- 5- ~~Keep a record of all the dangerous, contagious, and infectious diseases occurring within his jurisdiction, showing the name and address of the party affected, the name of the disease, by whom the same was reported, and such other statistical data as may be required by the state department of health.~~
3. Exercise the powers and duties of the city board of health under the supervision of such board and of the state department of health and consolidated laboratories.

4. Make sanitary inspections of such places as he deems advisable when he believes there is a probability that a health threatening condition exists within his jurisdiction, and take such action as he may deem necessary for the protection of the public health.
5. Investigate, subject to the supervisory control of the state department of health and consolidated laboratories, public water and ice supplies which are suspected of being contaminated, and cause them to be condemned when he finds it necessary.
6. Enforce cleanliness in schools, and inspect overcrowded, poorly ventilated, and unsanitary schoolhouses and, when necessary, report cases of unsanitary or unsafe school buildings to the city board of health for investigation.

SECTION 15. AMENDMENT. Section 23-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-04-06. Board of city commissioners is board of health in commission city cities. In a city operating under the commission system of government, the board of city commissioners shall constitute may appoint a board of health or the commission may serve as the board of health. The If the commission serves as the board of health, the city physician shall be is the executive officer of such the board. A board of health appointed by the city commission in a city operating under the city commission form of government is under the supervision of the state department of health and consolidated laboratories and consists of five members, including one physician, one dentist, one business or professional person, one city commissioner, and one other person appointed by the mayor, subject to confirmation by the city commission. When a city and county are organized as a health district under provisions of section 23-14-01.1, the "one other person" must be a county commissioner appointed by the board of county commissioners. Initially, the appointments will be one for one year, one for two years, one for three years, one for four years, and one for five years. All subsequent appointments must be for five years. In no instance may the board be either all male or all female. Each appointee shall serve until a successor is appointed and qualified, and if a vacancy occurs, the vacancy must be filled by appointment for the remainder of the unexpired term in the same manner as the initial appointment. Each appointee shall qualify by filing the constitutional oath of office in the office of the city or county auditor as the case may be. Members of the board appointed by the commission may be compensated at a rate not to exceed forty-five dollars per day and for not to exceed twenty-five days in any one year. They must be reimbursed for expenses incurred in the manner and to the extent provided for state officers.

SECTION 16. AMENDMENT. Section 23-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-04-08. Duty of police, civil officers, and other citizens to aid city physician health officer. All members of the police force of a city, operating under the commission system of government, all magistrates and other civil officers thereof, and all citizens, shall aid the city physician health officer in the discharge of his duties, and on his demand, the chief of police shall serve, or detail one or more policemen to serve, the notices issued by the city physician health officer and to perform such other duties as he may require.

* SECTION 17. AMENDMENT. Section 23-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-01. Powers and duties of local board of health. The district, county, and city, ~~and township~~ boards of health ~~shall be known as~~ subject to the supervisory control of the state department of health and consolidated laboratories and the state health officer, are local boards of health, and each board shall have the following powers and duties within its jurisdiction:

1. To employ ~~such~~ persons as may be necessary to carry into effect the regulations established by it and the provisions of this title.
2. To inquire into all nuisances, sources of filth, and causes of sickness, and make ~~such~~ regulations regarding the same as are necessary for the public health and safety, ~~but the regulations of the township board of health shall be temporary, and such board, immediately upon taking such action, shall report the same to the county superintendent of public health, who shall give the board specific instructions or take such action as he deems necessary for the protection of public health.~~
3. To adopt such quarantine and sanitary measures as are necessary when an infectious or contagious disease exists in its jurisdiction.
- ~~4. To provide such necessities of life as in its judgment shall be needed for the maintenance, welfare, and comfort of persons afflicted with contagious and infectious diseases.~~
- ~~5.~~ 4. To enter into and examine at any time all buildings, lots, and places of any description within its jurisdiction for the purpose of ascertaining the conditions thereof insofar as public health may be affected.
- ~~6.~~ 5. To make ~~such~~ rules and regulations ~~as are necessary and proper in~~ district health units and county health departments and to recommend to city councils or city commissions, as the case may be, ordinances for the preservation protection of public health and safety.
6. To keep records and make reports as may be required by the state department of health and consolidated laboratories.
7. To prepare a budget for the next fiscal year at the time at which, and in the manner in which in the case of a county, a county budget is adopted. The budget must be submitted to the county commissioners for approval. In the case of a city, the budget must be submitted to the governing body of the city for approval.

SECTION 18. AMENDMENT. Section 23-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-02. County board of health - Additional powers. The county board of health, subject to the supervisory control of the state department of health and consolidated laboratories and the state health officer, shall

* NOTE: Section 23-05-01 was also amended by section 2 of Senate Bill No. 2053, chapter 302.

have the following additional powers ~~within the county and outside of the corporate limits of any city:~~

1. To supervise all matters relating to the preservation of the life and health of the people of the county, including the supervision of public water supplies and sewerage systems.
2. To isolate, kill, or remove any animal affected with a contagious or infectious disease when such animal is a menace to the health of human beings.
3. To make and enforce orders in local matters when an emergency exists, or when the local board of health has neglected or refused to act with promptness or efficiency, or when the local board has not been established.

SECTION 19. AMENDMENT. Section 23-05-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-03. Publication of regulations and rules established by local board of health. Notice of general orders ~~and~~ regulations, and rules made by a local board of health shall be published once in the official newspaper published within the jurisdiction of the board, and if no such newspaper is published within such jurisdiction, then such notice either shall be published in the county official newspaper or shall be posted in five public places within the jurisdiction of the board. Such publication or posting shall constitute legal notice to all persons.

SECTION 20. AMENDMENT. Section 23-05-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-04. Abatement and removal of nuisance, source of filth, and cause of sickness - Costs charged against property. When it is necessary for the protection of the public health to abate or remove any nuisance, source of filth, or cause of sickness found on private property, the local board of health shall cause a notice to be served on the owner or occupant thereof requiring him to remove the same at his own expense within a reasonable time, ~~not to exceed twenty-four hours~~ thirty days. If the owner or occupant refuses or neglects to comply with such notice or if the nuisance, source of filth, or cause of sickness exists on the property of nonresident owners or upon property the owners of which cannot be found, the board of health shall cause the nuisance, source of filth, or cause of sickness to be removed or destroyed under its direction, at the expense of the county, city, or township, as the case may be, but such expense shall be charged against the lots, pieces, or parcels of land upon which the work was done.

SECTION 21. AMENDMENT. Section 23-05-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-07. Expenses of local boards of health - How audited and paid. Expenses incurred by a local board of health in carrying into effect the provisions of this title ~~and in providing for the care and maintenance of persons afflicted with contagious and infectious disease~~ shall be audited and allowed by the board incurring the same and certified for payment in the manner following:

1. ~~In the case of a township board of health, such expenses shall be certified to the township clerk and by him paid out of the general fund of the township.~~
2. ~~In the case of a county or city board of health or of a health commissioner, such expenses shall be certified to the governing body of the county or city for payment out of the general fund of the county or city, as the case may be, in the same manner as other expenses against the same are paid.~~
2. In the case of a district board of health, expenses must be paid out of the board of health budget.

SECTION 22. AMENDMENT. Section 23-05-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-12. Violation of orders of boards of health - Obstructing inspection - Penalty. Every person who violates, or refuses to comply with, any lawful order, direction, prohibition, ordinance, rule, or regulation prescribed by any board of health or health officer, or any regulation or rule lawfully made or established by any public officer under authority of the health laws, is guilty of a class B misdemeanor.

SECTION 23. AMENDMENT. Section 23-14-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-01. Formation of health districts. When in the opinion of the state health officer, on information obtained in cooperation with local health officers and local boards of health, the health needs of any given area may be better served by the formation of a health district, as hereinafter provided, the state health officer shall so notify the county auditor of each county involved and the city auditor of each city having a population in excess of fifteen thousand persons. Each county auditor and city auditor must place the matter before the governing board of the county or city at its next regular meeting, and the governing board by resolution either must adopt or reject the plan at the same or the first subsequent meeting. If resolutions are adopted by the governing boards of the cities and counties as hereinbefore provided, adopting the health district plan, all laws and parts of laws in conflict therewith automatically shall become inoperative throughout the territory embraced within the district, and particularly the laws relative to city, township, and county boards of health. If the board of county commissioners of any county or the city council or city commission of any city, rejects the plan, it may submit the question of adoption of the provisions of this chapter to the qualified electors of the county or city at the next ensuing general or special election to be held in said county or city. In all elections held under this chapter the votes cast in the cities having a population in excess of fifteen thousand inhabitants shall be considered separate and apart from the votes cast elsewhere in the county, and the participation in the health district by any city shall be governed by the votes cast in the city as distinguished from the vote cast elsewhere in the county. If a majority of the qualified electors vote in favor of the adoption of the provisions of this chapter, the board of county commissioners, within ten days after the canvass of said election, shall adopt such resolution, and, upon the adoption of such resolution such county or counties, together with the cities voting in favor of the plan, shall be considered a district health unit or health district. On a petition filed with the county auditor containing names of qualified

electors of the county equal to ten percent of the votes cast for the office of governor at the last general election, an election on the question of forming a health district shall be held as heretofore provided. The health districts shall follow county lines, and in case the district as outlined by the state health officer includes more than one county, and the plan is adopted in any of said counties or cities, and rejected in any one or more of the other counties or cities, it shall become effective in the county or counties and city or cities adopting the plan, if in the exercise of his discretion the state health officer deems the same operative.

SECTION 24. AMENDMENT. Section 23-14-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-01.1. Formation of county-city health districts. Notwithstanding any provisions of this chapter, a county not included within any health district as provided in this section may by a resolution adopted by the board of county commissioners of such county contract with the governing body of a city within such county which has a health department approved by the state department of health and consolidated laboratories to provide health services throughout the county and in other cities within the county which do not have approved health departments. Such contract shall be entered into pursuant to section 54-40-08. Further, the governing body of a city having a health department approved by the state department of health and consolidated laboratories may enter into a contract with the board of county commissioners of the county in which the city is located to provide health services to the county and cities therein which do not have an approved health department, which contract shall be entered into pursuant to the provisions of section 54-40-08. Any contract entered into under the authority of this section may be renegotiated after existing one year by mutual agreement between the governing bodies which are parties to the contract, or by one of the contracting parties giving notice by certified mail to the other contracting party. Such notice shall specify a time and place for the contracting parties to meet and renegotiate the existing contract. The time specified in the notice shall be no sooner than fifteen days after the mailing of the certified notice. When the contract is executed the health department of the city shall exercise and perform all the necessary powers and duties pursuant to all health laws of this state, and any provisions of this chapter relating to organizing district boards of health shall not apply. The county so organized pursuant to a contract entered into under this provision shall be considered a health district for all purposes by the state department of health and consolidated laboratories.

SECTION 25. AMENDMENT. Section 23-14-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-03. Organized by what officers. Upon the adoption of the plan by a single county, or by two or more contiguous counties, as provided in section 23-14-01, the board of county commissioners of the county or counties concerned shall proceed to organize such district health unit by the appointment of a district board of health as hereinafter provided, and in all cases where two or more counties constitute one health district, the term board of county commissioners shall be taken to mean the boards of county commissioners of the several counties concerned acting together in joint session unless the context requires a different meaning. The original meeting for the appointment of the district board of health, as well as all other meetings held for the purpose of filling vacancies on said board, shall be held at the county seat of the county having the larger population; upon

notice given to the boards of county commissioners by the state health officer.

* SECTION 26. AMENDMENT. Section 23-14-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-04. District board of health. A district health unit shall be organized by the appointment of a district board of health by the joint board of county commissioners to consist of not less than five members, one of whom shall be a physician, one a dentist, one a business or professional person, one a farmer, and one ~~additional person~~ a county commissioner, who shall be appointed for terms as follows: One for one year, one for two years, one for three years, one for four years, and one for five years. All subsequent appointments shall be for a term of five years. In no instance shall the board be either all male or all female. Each appointee shall serve until his successor is appointed and qualified, and if a vacancy occurs, the vacancy shall be filled by appointing for the remainder of the unexpired term in the same manner as the original appointments at the annual joint budget meeting. Each appointee shall qualify by filing the constitutional oath of office, and in case of a district health unit, such oath shall be filed in the office of the county auditor of the county having the larger population according to the most recent state or federal census. Each county in the district shall have at least one representative on the district board of health and counties of over fifteen thousand population shall have an additional representative for each fifteen thousand population or major fraction thereof. In district units of less than five counties, each county shall have at least one representative on the district board of health and the additional representatives selected to constitute the minimum five-member board shall be equitably apportioned among the counties on a population basis. In a city-county health district comprised of only one county and having a city or cities of fifteen thousand population or more, each city having a population of fifteen thousand or more shall have a representative on the district board of health for each fifteen thousand population or major fraction thereof and the remaining population of the county, exclusive of the populations of cities with fifteen thousand population or more each, shall have a representative on the district board of health for each fifteen thousand population or major fraction thereof. Members of the board may be compensated at the rate not to exceed forty-five dollars per day and not to exceed twenty-five days in any one year. They shall be reimbursed for expenses incurred in the manner and to the extent provided for state officers.

SECTION 27. AMENDMENT. Section 23-14-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-05. District health officer. The district board of health shall appoint for a term of five years a full-time district health officer, or a part-time district health officer, subject to removal for cause by the district board of health. He shall be a physician and surgeon regularly currently licensed to practice medicine and surgery in the state of North Dakota, and shall have the qualifications prescribed by the conference of state and territorial health officers of the United States; or shall have the recommendation of the state health officer; and he need not be, when appointed, a resident of the county or district. He shall qualify by filing the constitutional oath of office in the manner provided for the members of the district board of health. The district health officer shall, consistent with the terms of his appointment, devote his full time or his part time to

* NOTE: Section 23-14-04 was also amended by section 3 of Senate Bill No. 2410, chapter 635.

the duties of his office, and shall maintain an office within the jurisdiction of the district health unit, at the place to be designated by the district board of health, such office, with necessary equipment, to be furnished by the district board of health.

SECTION 28. AMENDMENT. Section 23-14-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-07. Duties of health officer. The district health officer shall perform all the duties and shall be guided by the limitations prescribed by law relative to county, and city, and township health officers, and he shall make such reports to the state department of health and consolidated laboratories as may be required by it.

SECTION 29. AMENDMENT. Section 23-14-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-08. Assistants to health officer. The district board of health shall provide for such ~~technical and clerical assistants to the district health officer~~ personnel as it may deem necessary. The district health officer shall have the right to select and discharge such assistants assistant health officers in the counties and cities in the district. When the health district is served by a part-time health officer, the district board of health may appoint an executive officer.

SECTION 30. AMENDMENT. Section 23-14-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-09. Meetings of board of health. The district board of health shall meet at least quarterly at the courthouse in the county seat of the county, and if two or more counties constitute the local health district the first meeting shall be held at the courthouse in the county seat of the larger county as determined by the most recent state and federal census. Subsequent quarterly meetings and special meetings shall be held at a place to be determined by the board, with the thought of rotating the meeting place among the various counties of the district. At the first meeting after their appointment, and annually thereafter, the members of the board shall organize by electing a president, a treasurer, and such other officers as they deem necessary. The treasurer shall be bonded in an amount to be fixed by the board. Upon his appointment and qualification, the district health officer shall be, ex officio, the secretary of the board and shall keep such records and make such reports as may be required by the board and by the state department of health and consolidated laboratories. If the health officer is not the physician appointed to the board, he does not have a vote in matters of the board. The office of secretary and treasurer may be combined if the health officer is the physician appointed to the board.

SECTION 31. AMENDMENT. Section 23-14-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-10. Salary and compensation. The salary of the district health officer and assistant health officers shall be fixed by the district board of health. The district board of health shall determine the compensation of such ~~technical and clerical help~~ personnel as may be allowed by the district board of health ~~to the district health officer~~, and the district board of health also shall determine the amount of mileage and other expense to be paid for the necessary travel of the district health officer ~~and~~, his

assistants, not to exceed the per diem and mileage rates established for and other personnel, in the manner and to the extent allowed state officers.

SECTION 32. AMENDMENT. Section 23-14-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-13. Dissolution. After a district health unit organized as provided in this chapter has been in operation for two years, the same may be dissolved in the following manner: On a petition filed with the county auditor of each county of a health district containing names of qualified electors of the county equal to ten percent of the votes cast for governor at the last general election in each county, an election on the question of dissolution shall be presented to the qualified electors in each county in the district at the next general or special election held in the each county in the district. If a majority of the votes cast in a majority of the counties favor dissolution, the health unit shall be dissolved on July January first following the election. If a majority of the votes cast in a majority of the counties are against dissolution, no other election shall be held until a period of two years has again expired.

SECTION 33. A new section to chapter 23-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

Withdrawal. After a district health unit organized as provided in this chapter has been in operation for two years, any county may withdraw from the district in the following manner: On a petition filed with the county auditor containing names of qualified electors of the county equal to ten percent of the votes cast for governor at the last general election in that county, an election on the question of withdrawal must be presented to the qualified electors in the county at the next general or special election held in the county. If a majority of the votes cast favor withdrawing from the district, the county will be considered withdrawn from the unit on January first following the election. If a majority of the votes cast are against withdrawal, no other election may be held until a period of two years has again expired.

SECTION 34. AMENDMENT. Section 23-14-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-14. Acquiring and disposing of property. The district board of health may acquire by lease, purchase, construction or gift for district health office use and control both real and personal property for all purposes authorized by law or necessary to the exercise of the powers granted herein. The district board of health may finance the purchase, construction or equipping of a building on either owned or leased property for the use and purposes for which the health district is formed, and to carry out the functions of the health unit as provided by law, in either of the following ways:

1. The district board of health may issue and sell bonds in an aggregate amount not to exceed two times the then authorized tax revenues of the district for the year in which the bonds are to be issued and sold; or
2. The district board of health may mortgage or otherwise encumber the building to be constructed in an amount of not to exceed two times

the then authorized tax revenue of the district for the year in which such construction is to be commenced.

Bonds so issued, and the income therefrom, shall be exempt from any taxes except inheritance, estate and transfer taxes. The indebtedness for which the bonds are issued, or for which a mortgage may be given as hereinabove provided, shall never become an obligation or indebtedness of the state of North Dakota, or of the counties or the cities comprising the district board of health. Any such indebtedness may be foreclosed in any manner provided by law. The district board of health may also convey, sell, dispose of or otherwise transfer personal and real property acquired as provided herein. If upon dissolution of a district health unit there remains any balance in the treasury of the district after all obligations have been paid, the balance shall be paid into the general fund of the counties comprising the health district in proportion to the mill levy most recently assessed for budget purposes assessed valuation most recently used in preparing the health district budget under the provisions of this chapter. If any county in the district votes to withdraw from the district, any assets and inventory of supplies and equipment located in the county for use in health district programs and services will remain the property of the district for use elsewhere in the district.

SECTION 35. REPEAL. Sections 23-03-04, 23-03-06, 23-03-09, 23-03-11, 23-04-07, 23-04-09, 23-05-08, and 23-05-09 of the North Dakota Century Code are hereby repealed.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 302

SENATE BILL NO. 2053
(Legislative Council)
(Interim Judiciary Committee)

QUARANTINE

AN ACT to create and enact a new chapter to title 23 of the North Dakota Century Code, relating to quarantine procedure for persons with communicable diseases; and to amend and reenact sections 23-03-08, 23-05-01, 23-07-06, 23-07-13, and 40-06-01 of the North Dakota Century Code, relating to quarantine authority of local boards of health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 23-03-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-03-08. County ~~superintendent of~~ health officer may quarantine - Expenses. The county ~~superintendent of public~~ health officer shall decide when quarantine and disinfection are necessary for the safety of the public. ~~He~~ The county health officer may establish quarantines consistent with procedures provided under section 5 of this Act and perform such acts as are required for disinfection when the same is necessary, and may enforce his the county health officer's orders and the orders of the county board of health in connection therewith. All expenses incurred in quarantining or disinfecting outside of incorporated cities ~~shall~~ must be audited by the county board of health and paid out of the general fund of the county.

** SECTION 2. AMENDMENT. Section 23-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-05-01. Powers and duties of local board of health. The county, city, and township boards of health ~~shall be known as~~ are local boards of health, and each board shall have the following powers and duties within its jurisdiction:

1. To employ such persons as may be necessary to carry into effect the regulations established by it and the provisions of this title.
2. To inquire into all nuisances, sources of filth, and causes of sickness, and make such regulations regarding the same as are necessary for the public health and safety, but the regulations of the township board of health ~~shall be~~ are temporary, and such board, immediately upon taking such action, shall report the same to the county ~~superintendent of public~~ health officer, who shall give the board specific instructions or take such action as ~~he~~ the county health officer deems necessary for the protection of public health.

* NOTE: Section 23-03-08 was also amended by section 7 of Senate Bill No. 2200, chapter 301.

** NOTE: Section 23-05-01 was also amended by section 17 of Senate Bill No. 2200, chapter 301.

3. To adopt such quarantine and sanitary measures as are necessary when an infectious or contagious disease exists in its jurisdiction, but quarantine measures must be in compliance with section 5 of this Act.
4. To provide such necessities of life as in its judgment ~~shall be~~ are needed for the maintenance, welfare, and comfort of persons afflicted with contagious and infectious diseases.
5. To enter into and examine at any time all buildings, lots, and places of any description within its jurisdiction for the purpose of ascertaining the conditions thereof insofar as public health may be affected.
6. To make such rules ~~and regulations~~ as are necessary and proper for the preservation of public health and safety.

SECTION 3. AMENDMENT. Section 23-07-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-06. Contagious or infectious diseases - Power of local board of health to quarantine. Whenever ~~it shall come to the knowledge of~~ a local board of health ~~knows~~ that a case of a contagious or infectious disease exists within its jurisdiction, the board immediately shall examine the facts of the case and may adopt such quarantine and sanitary measures as in its judgment tend to prevent the spread of such disease. The board immediately may cause any person infected with such disease to be removed to a separate house if, in the opinion of the health officer ~~or county superintendent of public health~~, such person can be removed without danger to ~~his~~ that person's health. If the infected person cannot be removed without danger to ~~his~~ that person's health, the local board shall make such quarantine regulations as it deems proper with reference to the house within which such infected person is, and may cause the persons in the neighborhood to be removed, and may take such other measures as it deems necessary for the safety of the inhabitants within its jurisdiction. Quarantine measures adopted under this section must be in compliance with section 5 of this Act.

SECTION 4. AMENDMENT. Section 23-07-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-13. Contagious or infectious diseases - Local board may establish temporary hospital. Each local board of health may provide such temporary hospital or place of reception for persons afflicted with any contagious or infectious disease as it judges best for their accommodation and the safety of the inhabitants. It may provide a means of transportation to such hospital for persons suffering from any such disease. All such hospitals, and all private houses or other places in which exists any contagious or infectious disease, during the existence of such disease, ~~shall be~~ are under the control and subject to the regulations of the local board of health. ~~All the inmates of any such house or other place, during the existence of such disease therein, must conform to the regulations and obey the instructions of the local board with reference thereto.~~

SECTION 5. A new chapter to title 23 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Communicable disease" means a disease or condition that causes serious illness, serious disability, or death, the infectious agent of which may pass or be carried, directly or indirectly, from the body of one person to the body of another.
2. "Local board" means a board of health as described under section 23-05-01 or a district board of health as described under section 23-14-04.
3. "Respondent" means the person ordered to be confined or restricted under this chapter.

Confinement order. The state health officer or any local board may order any person into confinement if there are reasonable grounds to believe that the person is infected with any communicable disease and is unable or unwilling to behave in a manner as not to expose other persons to danger of infection, the state health officer or local board determines that the person poses a substantial threat to the public health, and confinement is necessary and is the least restrictive alternative to protect or preserve the public health.

Contents of the order. The confinement order must be in writing and set forth the name of the person to be confined; the grounds for the belief that the person has a communicable disease and is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection; that the person poses a substantial threat to the public health and that confinement is necessary and is the least restrictive alternative to protect or preserve the public health; the place of designated confinement, and any conditions or restrictions necessary to protect or preserve the public health. The order must also list the respondent's rights under this chapter. A copy of the order must be given to the respondent. If the order is issued by a local board, the local board, within twenty-four hours of the issuance of the order, shall notify the state health officer that the order has been issued. The order is effective for not more than thirty days. Orders of confinement under this chapter may be issued for successive periods of not more than thirty days each if issued before the last business day of the preceding period of confinement.

Place of confinement. A respondent must be confined in a place designated in the order until the entity that issued the order determines that the respondent no longer poses a substantial threat to the public health or until a court of competent jurisdiction orders the release of the respondent.

Court hearing. A respondent has the right to a court hearing in the county court of the county in which the respondent resides. The respondent or the respondent's representative has a right to be present at the hearing. The respondent has a right to counsel and if the respondent is indigent or otherwise unable to pay for or obtain counsel, the respondent has the right to have counsel appointed. The respondent, respondent's representative, or respondent's counsel has the right to cross-examine witnesses testifying at the hearing. If the respondent, respondent's representative, or respondent's counsel requests, in writing, a hearing, the hearing must be held within seventy-two hours of receipt of the request, excluding Saturdays and

holidays. A request for a hearing does not stay the order of confinement. The court shall determine if the respondent is infected with a communicable disease, is unable or unwilling to behave in a manner as not to expose other persons to danger of infection, poses a substantial threat to the public health, and confinement is necessary and is the least restrictive alternative to protect or preserve the public health. If the order is issued by a local board, the state health officer has the right to be made a party to the proceedings.

Notice of hearing. Notice of the hearing must be given to the respondent and must inform the respondent of the respondent's rights under this chapter.

Access to records. Before a hearing conducted under this chapter, the respondent, respondent's representative, or respondent's counsel must be afforded access to all records including hospital records if the respondent is hospitalized. If the respondent is hospitalized at the time of the hearing, the hospital must make available at the hearing for use by the respondent, respondent's representative, or respondent's counsel all records in its possession relating to the conditions of the respondent.

Burden of proof. At a hearing conducted under this chapter, the entity that ordered confinement has the burden of showing by clear and convincing evidence that the respondent is infected with a communicable disease, is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection, and poses a substantial threat to the public health, and that confinement of the respondent is necessary and is the least restrictive alternative to protect or preserve the public health.

Court findings and orders. If the court finds by clear and convincing evidence that the respondent is infected with a communicable disease, is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection, and poses a substantial threat to the public health, and that confinement of the respondent is necessary and is the least restrictive alternative to protect or preserve the public health, the court may order the continued confinement of the respondent under any conditions and restrictions the court determines appropriate until the entity that issued the original confinement order determines that the respondent's release would not constitute a substantial threat to the public health, or may order the release of the respondent under any conditions and restrictions the court determines appropriate to protect the public health. If the court fails to find that the conditions required for an order for confinement have been proven, the court shall order the immediate release of the respondent.

Request to terminate or modify an order - Review of confinement orders. A respondent may, at any time, request the court to terminate or modify an order of the court, in which case a hearing must be held in accordance with this chapter. Upon its own motion, the court periodically shall conduct a hearing to determine if the conditions requiring the confinement or restriction of the respondent continue to exist. If the court, at a hearing held upon motion of the respondent or its own motion, finds that the conditions requiring confinement or restriction no longer exist, the court shall order the immediate release of the respondent. If the court finds that the conditions continue to exist but that a different remedy is appropriate under this chapter, the court may modify its order accordingly.

Closed hearing - Confidentiality of information. At the request of the respondent, a hearing conducted under this chapter must be closed and any report, transcript, record, or other information relating to actions taken under this chapter must be kept confidential.

Right of appeal. Any party aggrieved by an order of the county court under this section may appeal to the supreme court.

SECTION 6. AMENDMENT. Section 40-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-06-01. Jurisdiction of governing body. Except as otherwise provided by law, a governing body of a municipality ~~shall have~~ has jurisdiction:

1. Over any commons or public grounds belonging to such municipality and with the consent of the majority of the owners thereof shall have power to regulate the banks, shores, and wharves of that portion of any navigable stream within the corporate limits; and
2. In and over all places within one-half mile [804.67 meters] of the municipal limits for the purpose of enforcing health and quarantine ordinances and regulations, subject to section 5 of this Act, and police regulations and ordinances adopted to promote the peace, order, safety, and general welfare of the municipality.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 303

SENATE BILL NO. 2055
(Legislative Council)
(Interim Judiciary Committee)

UNIFORM ANATOMICAL GIFT ACT

AN ACT to create and enact chapter 23-06.2 of the North Dakota Century Code, relating to the adoption of the Uniform Anatomical Gift Act (1987); to amend and reenact sections 23-06-01.2, 39-06-07, and subsection 1 of section 39-06-14 of the North Dakota Century Code, relating to disposal of bodies and donor designations on operators' licenses; to repeal section 23-06-01.1 and chapter 23-06.1 of the North Dakota Century Code, relating to physician liability for the removal of a body part and the Uniform Anatomical Gift Act; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-01.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-01.2. Application of other laws. ~~The provisions of sections~~ Sections 23-06-03, 23-06-04, 23-06-05, 23-06-06, 23-06-07, 23-06-08, 23-06-09, 23-06-10, 23-06-11, 23-06-12, 23-06-16, 23-06-17, and 23-06-19 do not apply to any body or parts thereof disposed of after death pursuant to the authorization for disposal of a body or parts thereof provided in ~~chapter 23-06-1~~ and for the purposes of chapter ~~23-06-1~~ 23-06.2.

SECTION 2. Chapter 23-06.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-06.2-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.
2. "Decedent" means a deceased individual and includes a stillborn infant or fetus.
3. "Document of gift" means a card, a statement attached to or imprinted upon a motor vehicle operator's license, a will, or any other writing used to make an anatomical gift.
4. "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.
5. "Enucleator" means an individual who has successfully completed a course in eye enucleation conducted by the department of ophthalmology of an accredited college of medicine that has been approved by the state board of medical examiners.

6. "Hospital" means a facility licensed, accredited, or approved as a hospital under the laws of any state and includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state law.
7. "Part" means an organ, tissue, eye, bone, artery, blood, fluid and any other portion of a human body.
8. "Physician" or "surgeon" means an individual licensed or authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.
9. "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts thereof.
10. "State" means any state, district, commonwealth, territory, insular possession, or other area subject to the legislative authority of the United States of America.
11. "Technician" means an individual who is licensed or certified by the state board of medical examiners to remove or process a part.

23-06.2-02. Making, amending, revoking, and refusing to make anatomical gifts by individual.

1. An individual who has attained eighteen years of age may make an anatomical gift for any of the purposes specified in subsection 1 of section 23-06.2-06 or may refuse to make an anatomical gift. An individual may limit an anatomical gift to one or more of the purposes specified in subsection 1 of section 23-06.2-06.
2. An anatomical gift may be made by a document of gift.
 - a. A document of gift must be signed by the donor. If the donor cannot sign, the document of gift must state that it has been signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and in the presence of each other.
 - b. A document of gift may be a statement attached to or imprinted upon a donor's motor vehicle operator's license, subject to subdivision a. Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.
 - c. Notwithstanding subsection 2 of section 23-06.2-08, a document of gift may designate a particular physician or surgeon to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the anatomical gift may employ or authorize any physician, surgeon, technician, or enucleator for the purpose.
3. An anatomical gift by will becomes effective upon death of the testator without waiting for probate. If the will is not probated,

or if, after death, it is declared invalid for testamentary purposes, the gift is nevertheless valid.

4. The donor may amend or revoke an anatomical gift, not made by will, only by:
 - a. A signed statement;
 - b. An oral statement made in the presence of two individuals;
 - c. Any form of communication during a terminal illness or injury addressed to a physician or surgeon; or
 - d. The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.
5. An anatomical gift made by a will may be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection 4.
6. An anatomical gift that is not revoked by the donor is irrevocable and does not require the consent or concurrence of any other person after the death of the donor but is subject to subsection 2 of section 23-06.2-11.
7. A potential donor may refuse to make an anatomical gift by a writing executed in the same manner as an anatomical gift is made or any other instrument used to identify the individual as refusing to make an anatomical gift. It may be an oral statement or other form of communication during a terminal illness or injury.
8. An anatomical gift of a part by a donor pursuant to subsection 1 is not a refusal to give other parts in the absence of contrary indications by the donor and is not a limitation on a gift or release of other parts pursuant to sections 23-06.2-03 and 23-06.2-04.
9. A revocation or amendment of an anatomical gift by a donor is not a refusal to make another anatomical gift in the absence of contrary indications by the donor. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor must make a refusal pursuant to subsection 7.

23-06.2-03. Making, revoking, and objecting to anatomical gifts by others.

1. Unless an individual at the time of death has refused to make any anatomical gift, then any member of the following classes of persons, in the order of priority stated, may make an anatomical gift of all or any part of the decedent's body for any purpose specified in section 23-06.2-06:
 - a. The spouse of the decedent.
 - b. An adult son or daughter of the decedent.
 - c. Either parent of the decedent.

- d. An adult brother or sister of the decedent.
 - e. A grandparent of the decedent.
 - f. A guardian of the person of the decedent at the time of death.
2. A gift may not be made by a person specified in subsection 1 if:
- a. A person in a prior class is available at the time of death to make an anatomical gift;
 - b. The person has knowledge of contrary indications by the decedent; or
 - c. The person has knowledge of an objection by a member of the person's class or a prior class.
3. An anatomical gift by a person under subsection 1 must be made by a document of gift signed by the person, or by the person's telegraphic, recorded telephonic, or other recorded message, or other type of communication from the person that is contemporaneously reduced to writing and signed by the recipient.
4. An anatomical gift by a person under subsection 1 may be revoked by any member of the same or a prior class if, before commencement of procedures for the removal of any part from the body of the decedent, the physician, surgeon, technician, or enucleator taking the part knows of the revocation.
5. A failure to make an anatomical gift under subsection 1 is not an objection to the making of an anatomical gift.
- 23-06.2-04. Authorization by coroner or local public health official.
1. The coroner may permit the removal and release of any part from a body within the coroner's custody, for transplant or therapeutic purposes, if the following requirements are met:
- a. A request has been received from a person specified in subsection 1 of section 23-06.2-06;
 - b. A reasonable effort has been made, taking into account the useful life of the part, to locate and examine the decedent's medical records, and to inform persons specified in subsection 1 of section 23-06.2-03 of the option to make or object to the making of an anatomical gift;
 - c. That official does not know of a contrary indication by the decedent or objection by a person having priority to act as specified in subsection 1 of section 23-06.2-03;
 - d. The removal will be by a physician, surgeon, or technician; but in the case of eyes, removal may be by an enucleator;
 - e. The removal will not interfere with any autopsy or investigation; and

f. The removal will be in accordance with accepted medical standards and cosmetic restoration will be done if appropriate.

2. If the body is not within the custody of the coroner, the local public health officer may permit the removal and release of any part from a body within the local public health officer's custody for transplant or therapeutic purposes if the enumerated requirements of subsection 1 are met.
3. An official permitting the removal and release of any part shall maintain a permanent record of the name of the decedent, the person making the request, the date and purpose of the request, the part requested, and the person to whom it is released.

23-06.2-05. Request for consent to an anatomical gift - Protocol - Exceptions.

1. When death occurs, or is deemed to be imminent, in a hospital to a patient who has not made an anatomical gift, the hospital administrator or a designated representative, other than a person connected with the determination of death, shall request the person described in subsection 1 of section 23-06.2-03, in the order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indication by the decedent or one in a prior class, to consent to the gift of organs of the decedent's body as an anatomical gift. The hospital must develop a protocol that includes the training of employees or other persons designated to make the request, the procedure to be followed in making the request, and a form of record identifying the person making the request and the response and relationship to the decedent. The protocol must encourage reasonable discretion and sensitivity to the family circumstances in all discussions regarding anatomical gifts.
2. If, based upon medical criteria, a request would not yield an anatomical gift that would be suitable for use, there is authorized an exception to the request required by this section.
3. If, based upon the attending physician's special and peculiar knowledge of the decedent or the circumstances surrounding the death of the patient, the attending physician determines that a request will not be made for an anatomical gift, that determination must be noted in the patient's medical record. The determination is an exception to the request required by this section.
4. A reasonable search for a document of gift or other information identifying the bearer as an anatomical gift donor or as an individual who has refused to make an anatomical gift must be made by:
 - a. A law enforcement officer, fireman, paramedic, or other emergency rescuer finding an individual whom the searcher believes to be dead or near death; and
 - b. A hospital representative upon the admission of an individual at or near the time of death, if there is no other source of that information immediately available.

5. If a document of gift or evidence of refusal to make a gift is located by the search required by subdivision a of subsection 3, a hospital must be notified of the contents and the document must be sent to the hospital with the individual to whom it applies.
6. If, at or near the time of death, a hospital knows that an anatomical gift has been made pursuant to subsection 1 of section 23-06.2-03 or has been authorized pursuant to section 23-06.2-04, or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is specified; if not, the hospital shall notify an appropriate procurement organization. The hospital shall cooperate in the implementation of the anatomical gift.
7. Any person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability but is subject to appropriate administrative sanctions.

23-06.2-06. Persons who may become donees - Purposes for which anatomical gifts may be made.

1. The following persons may become donees of anatomical gifts for the purposes stated:
 - a. Any hospital, physician, surgeon, or procurement organization, for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science.
 - b. Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy.
 - c. Any specified individual for transplantation or therapy needed by that individual.
2. An anatomical gift may be made to a specified donee or without specifying a donee. If a donee is not specified or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital.
3. If the donee has knowledge of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class under subsection 1 of section 23-06.2-03, the donee may not accept the gift.

23-06.2-07. Delivery of document of gift.

1. Delivery of a document of gift during the donor's lifetime is not necessary to the validity of an anatomical gift.
2. If an anatomical gift is made to a specified donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures immediately after death. The document of gift, or a copy, may be deposited in any hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested person, upon or after the donor's death, the person in

possession shall provide the document of gift or a copy for examination.

23-06.2-08. Rights and duties at death.

1. Rights of a donee created by an anatomical gift are paramount to rights of others except as provided by subsection 2 of section 23-06.2-11. A donee may accept or reject an anatomical gift. If a donee accepts a gift of the entire body, the donee, subject to the terms of the gift, may authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.
2. The time of death shall be determined by a physician or surgeon who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the attending physician or surgeon nor the physician or surgeon who determines the time of death may participate in the procedures for removing or transplanting a part, except as provided in subdivision c of subsection 2 of section 23-06.2-02.
3. If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician or surgeon.

23-06.2-09. Coordination of procurement and utilization. Each hospital, after consultation with other hospitals and procurement organizations in the region, shall establish agreements or affiliations for coordination of procurement and utilization of anatomical gifts.

23-06.2-10. Sale or purchase prohibited - Penalty.

1. A person may not knowingly, for valuable consideration, purchase or sell any part for transplantation or therapy, if removal of the part is intended to occur after the death of the decedent.
2. Valuable consideration does not include reasonable payments for removal, processing, disposal, preservation, quality control, storage, transportation, and implantation of a part.
3. Any person who violates this section is guilty of a class B misdemeanor.

23-06.2-11. Examination - Autopsy - Liability.

1. An anatomical gift authorizes any reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.
2. This chapter is subject to the laws of this state prescribing powers and duties with respect to autopsies.

3. Except as provided in section 23-06.2-10, a hospital, physician, surgeon, coroner, local public health officer, enucleator, technician, or any other person who acts in accordance with this chapter or with the applicable anatomical gift law of another state or a foreign country or attempts in good faith to do so is not liable for that activity in any civil action or criminal proceeding.
4. An individual who makes an anatomical gift and the individual's estate are not liable for any injury or damage that may result from the use of the anatomical gift.

23-06.2-12. Application. This chapter applies to a document of gift or refusal to make a gift signed by the donor before, on, or after the effective date of this Act.

SECTION 3. AMENDMENT. Section 39-06-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-07. Application for license or instruction permit.

1. Every application for an instruction permit or for an operator's license must be made upon a form furnished by the commissioner.
2. Every ~~said~~ application must state the full name, date of birth, sex, residence and mailing address, and briefly describe the applicant. In signing the application the applicant ~~must be~~ is deemed to have certified that all information contained on the application is true and correct ~~and~~. The application must be accompanied by the proper fee. The application must also provide for the voluntary identification of the applicant as a donor under the provisions of chapter ~~23-06.1~~ 23-06.2. The application must contain such other information as the commissioner may require.
3. Whenever an application is received from a person previously licensed in another jurisdiction, the commissioner may request a copy of the driver's record from such other jurisdiction. When received, the driving record becomes a part of the driving record in this state with the same force and effect as though entered on the driving record in this state in the original instance.
4. Whenever the commissioner receives a request for a driving record from another licensing jurisdiction the record must be forwarded without charge.

* SECTION 4. AMENDMENT. Subsection 1 of section 39-06-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The commissioner shall, upon payment of a ten dollar fee, issue to every qualified applicant an operator's license as applied for in the form prescribed by the commissioner. The license must bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. If the licensee is under the age of twenty-one, the photograph must be against a color

* NOTE: Section 39-06-14 was also amended by section 1 of House Bill No. 1666, chapter 461, and section 5 of House Bill No. 1172, chapter 460.

background that is different from the color used for other licensees. If requested on the license application, the license issued by the commissioner must ~~identify the licensee as a donor~~ include a statement making an anatomical gift under ~~the provisions of chapter 23-06.1~~ 23-06.2. No license is valid until it has been signed by the licensee with the licensee's usual signature. The state highway department shall develop a system to require each applicant for an operator's license or renewal of an operator's license to determine whether or not the applicant wishes to be a donor under this Act. For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The commissioner may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on ~~operator's~~ operators' licenses.

SECTION 5. REPEAL. Section 23-06-01.1 and chapter 23-06.1 of the North Dakota Century Code are hereby repealed.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 304

HOUSE BILL NO. 1369
(J. DeMers, A. Olson)

FUNERAL COSTS AND MEDICAL ASSISTANCE

AN ACT to amend and reenact subsection 4 of section 23-06-03 and section 50-24.1-02.3 of the North Dakota Century Code, relating to the duty of burial and pre-need funeral service plans; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 23-06-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. If the deceased is survived by no person described by subsection 1 or 2 and did not leave sufficient means to defray funeral expenses, including the cost of a casket, the county social service board of the county in which the deceased had residence for poor relief purposes or if residence cannot be established, then the county social service board of the county in which the death occurs, shall employ some person to arrange for and supervise the burial. The cost of the burial shall be paid by the county social service board, subject to the following:
 - a. The sum of ~~six~~ eight hundred dollars shall be allowed for personal property and burial services furnished by a funeral director or funeral home.
 - b. The reasonable costs of transporting the body to the place of burial, but not exceeding one hundred dollars.
 - c. The cost of the grave box or vault, not to exceed the sum of two hundred thirty-five dollars, provided that a grave box or vault is required by the cemetery before a burial may be made.
 - d. The cost of a grave space, not to exceed the sum of one hundred seventy-five dollars.
 - e. Any grave opening and closing expenses, not to exceed the sum of one hundred seventy-five dollars.

Payment for services rendered or personal property furnished under subdivisions a, b, and c shall be made to the funeral home or funeral director furnishing the same, while payment for a grave space, services rendered, or personal property furnished under subdivisions d and e shall be made to the cemetery furnishing the same.

SECTION 2. AMENDMENT. Section 50-24.1-02.3 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.1-02.3. When pre-need funeral plan not to be considered in eligibility determination. In determining eligibility for medical assistance, the department of human services may not consider as an available resource any prepayments or deposits which total three thousand dollars or less, and the interest accrued thereon, made under a pre-need funeral service contract by an applicant for or recipient of medical assistance. A pre-need funeral service contract deposit is not a multiple-party account for purposes of chapter 30.1-31. No claim for payment of funeral expenses may be made against the estate of a deceased medical assistance recipient except to the extent that prepayments or deposits on pre-need funeral service contracts total less than one thousand four hundred dollars.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on January 1, 1990.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 305

HOUSE BILL NO. 1273
(Gates, Hoffner)

PRE-NEED FUNERAL CONTRACT DEPOSITORIES

AN ACT to amend and reenact section 23-06-03.1 of the North Dakota Century Code, relating to designated depositories for pre-need funeral contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 23-06-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-03.1. Payments on pre-need funeral contracts to be deposited in a bank or trust company - Bank Depository shall keep record of deposit - Personal property storage - Penalty. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under such contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under such contracts for the sale of cemetery merchandise shall be deposited within thirty days in a bank, credit union, savings and loan association, or trust company carrying federal deposit insurance and located within the state of North Dakota. Payments received from any sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by any licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not such sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. Such funds may be released by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death shall be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. Such funds may be released by the bank, credit union, savings and loan association, or trust company to the person making such payment, prior to the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor at the request of the person making such payment.

Any bank, credit union, savings and loan association, or trust company receiving such a deposit shall keep a complete record thereof, showing the name of the depositor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be identified and marked as belonging to such purchaser, and stored or

* NOTE: Section 23-06-03.1 was also amended by section 1 of House Bill No. 1163, chapter 306.

warehoused for the purchaser, must be stored or warehoused at some location within the state of North Dakota.

Any person who willfully violates this section or any rule or order of the commissioner pursuant hereto is guilty of a class C felony. Each violative act constitutes a separate offense and a prosecution or conviction of any one offense shall not bar a prosecution or conviction for any other offense.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 306

HOUSE BILL NO. 1163
(Committee on Human Services and Veterans Affairs)
(At the request of the Securities Commissioner)

PRE-NEED FUNERAL SERVICE DEPOSITS

AN ACT to amend and reenact sections 23-06-03.1, 43-10.1-03, 43-10.1-04, and 43-10.1-05 of the North Dakota Century Code, relating to pre-need funeral services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 23-06-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-03.1. Payments on pre-need funeral contracts to be deposited ~~in a bank or trust company - Bank~~ Depository shall keep record of deposit - Personal property storage - Penalty. Whenever payments are made to any person upon pre-need funeral service contracts, one hundred percent of the funds collected under such contracts for the sale of professional service or personal property to be used in funeral services and fifty percent of the funds collected under such contracts for the sale of cemetery merchandise shall be deposited within ~~thirty ten~~ ten days in a bank, credit union, savings and loan association, or trust company carrying federal deposit insurance and located within the state of North Dakota. Payments received from any sale of professional service or personal property to be used in funeral services or cemetery merchandise which cannot or would not be serviced by any licensed funeral establishment or cemetery association in the area where the service or property was sold are specifically included, whether or not such sales might otherwise be considered pre-need funeral service contracts, within the payments to be deposited under this section. Such funds may be released by the bank, credit union, savings and loan association, or trust company to the depositor upon the death of the person for whose benefit the funds were paid. A certified copy of the certificate of death shall be furnished to the bank, credit union, savings and loan association, or trust company as prima facie evidence of death. Such funds may be released by the bank, credit union, savings and loan association, or trust company to the person making such payment, prior to the death of the person for whose benefit the funds are paid, upon a five-day written notice by registered or certified mail made by the bank, credit union, savings and loan association, or trust company to the depositor at the request of the person making such payment.

Any bank, credit union, savings and loan association, or trust company receiving such a deposit shall keep a complete record thereof, showing the name of the depositor, name of the person making payment, name of the person for whose benefit payment is made, and any other pertinent information.

Any personal property to be used in funeral services or cemetery merchandise which is sold to a purchaser on the basis that it will be

* NOTE: Section 23-06-03.1 was also amended by section 1 of House Bill No. 1273, chapter 305.

identified and marked as belonging to such purchaser, and stored or warehoused for the purchaser, must be stored or warehoused at some location within the state of North Dakota.

Any person who willfully violates this section or any rule or order of the commissioner pursuant hereto is guilty of a class C felony. Each violative act constitutes a separate offense and a prosecution or conviction of any one offense shall not bar a prosecution or conviction for any other offense.

* SECTION 2. AMENDMENT. Section 43-10.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10.1-03. Annual report filed with securities commissioner. On or before January thirty-first of each year, the owner or manager of each cemetery association or licensed funeral establishment that has entered into any pre-need funeral service contracts shall file a report covering the period of the preceding calendar year with the securities commissioner, which report shall include:

1. The name and address of the licensed funeral establishment or cemetery association and the name and address of the manager or operator thereof.
2. The name of the purchaser and beneficiary of each pre-need funeral service contract entered into on behalf of the licensed funeral establishment or cemetery association during the preceding calendar year and the date each contract was made.
3. The lump-sum consideration paid upon such pre-need funeral service contract required to be reported under subsection 2 or the total amount in dollars of any installments paid upon each pre-need funeral service contract required to be reported under subsection 2.
4. The name and address of the bank, credit union, savings and loan association, or trust company in which such consideration was deposited in accordance with section 23-06-03.1.
5. The total in dollars of all sums received as consideration upon pre-need funeral service contracts executed by the licensed funeral establishment or cemetery association or in its behalf during all periods after July 1, 1973, which are undrawn or unexpended and on deposit in a bank, credit union, savings and loan association, or trust company or in the hands of the licensed funeral establishment or cemetery association.
6. Such other information as may reasonably be required by the securities commissioner for the purpose of the proper administration of this chapter.

Such report shall be accompanied by a filing fee of ~~five~~ fifteen dollars and shall be a public record.

SECTION 3. AMENDMENT. Section 43-10.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- * NOTE: Section 43-10.1-03 was also amended by section 2 of Senate Bill No. 2209, chapter 125.

43-10.1-04. Bond. The owner or operator of a licensed funeral establishment or cemetery association shall, at the time of filing the annual report required in section 43-10.1-03, file with the ~~commissioner of securities commissioner~~ a corporate or personal surety bond approved by the ~~commissioner of securities commissioner~~ in an amount deemed adequate by the ~~commissioner of securities commissioner~~. The bond shall be payable to the state of North Dakota, and in such form and style as the ~~commissioner of securities commissioner~~ may require for the use and benefit of the purchasers or persons making payments upon pre-need funeral service contracts or their estates, or the beneficiary of the pre-need funeral service contract or his estate for damages suffered by them because of the failure to comply with all provisions of the pre-need funeral service contract.

SECTION 4. AMENDMENT. Section 43-10.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10.1-05. Verification by ~~commissioner of securities commissioner~~. Within ninety days after the filing of a report as required by section 43-10.1-03, the ~~commissioner of securities commissioner~~ shall verify such report by mailing to five percent of the ~~purchasers or persons making payments upon such pre-need funeral service contracts~~ and to the banks, credit unions, savings and loan associations, or trust companies where the report indicates the consideration ~~filed~~ has been deposited, a questionnaire which ~~the purchaser or person making payment and the bank, credit union, savings and loan association, or trust company is requested to complete and return, verifying the facts stated in the report in regard to the contract or the deposit of funds.~~ The ~~commissioner of securities commissioner~~ shall verify the facts on additional contracts reported if the commissioner shall have reason to believe additional verification to be necessary; ~~but shall always verify at least one contract listed in every report.~~

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 307

HOUSE BILL NO. 1584
(Representatives Martin, Kouba, V. Thompson)
(Senators Maixner, Krauter, Nalewaja)

BURIAL PLACE AND CULTURAL RESOURCE PROTECTION

AN ACT to amend and reenact sections 23-06-27, 55-03-01.1, 55-03-02, 55-03-03, 55-03-04, and 55-03-07 of the North Dakota Century Code, relating to the unlawful opening of places of burial and the protection of cultural resources; to repeal section 55-03-05 of the North Dakota Century Code, relating to the unrestricted exploration for and excavation of cultural resources by a landowner; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-06-27 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-06-27. ~~Unlawfully opening place of burial - Penalty~~ Protection of human burial sites, human remains, and burial goods - Unlawful acts - Penalties - Exceptions. A person is guilty of a class E felony who, without authority of law, opens any grave or any place of burial, temporary or otherwise, or who breaks open any building wherein any dead body of a human being is deposited while awaiting burial, with intent, either:

1. To remove the dead body of a human being, or any part thereof, or As used in this section:
 - a. "Burial goods" shall mean any objects or items interred with human remains at the time of burial.
 - b. "Disturb" shall mean move, open, expose, dig up, disinter, excavate, remove, carry away, damage, injure, deface, desecrate, loot, vandalize, mutilate, or destroy.
 - c. "Human burial site" shall mean any place of interment, by any means, of human remains or burial goods, which is designated by a grave marker or other burial structure or which is not so designated, but is, in fact, discovered or believed to exist on the basis of archaeological or historical evidence.
 - d. "Human remains" shall mean any part of the body of a deceased human being in any stage of decomposition.
 - e. "Land" shall mean all lands, including submerged lands, located within the state of North Dakota which are owned by the state or its political subdivisions, agencies, or instrumentalities, or by any private person.

- f. "Person" shall mean a natural person, corporation, unincorporated association, partnership, proprietorship, or governmental entity.
2. To steal the coffin or any part thereof, or anything attached thereto or connected therewith, or the vestments or other articles buried with the same: A person is guilty of a class C felony who, without authority of law, breaks open any building wherein any body of a deceased human being is deposited while awaiting burial, with the intent of either removing such human body, or any part thereof, or stealing the coffin, or any part thereof, or anything attached thereto or connected therewith, or the vestments or other articles intended to be buried with the human body.
 3. A person is guilty of a felony who, without authority of law, willfully, as defined in section 12.1-02-02, disturbs a human burial site, human remains, or burial goods found in or on any land, or attempts to do the same, or incites or procures the same to be done.
 - a. A person is guilty of a class B felony if the offense in this subsection was committed for monetary gain, whether or not such monetary gain was related to the use of the land in or on which the burial, remains, or goods were disturbed.
 - b. A person is guilty of a class C felony if the offense in this subsection was not committed for monetary gain.
 4. Any person who knows or has reasonable grounds to believe that a human burial site, human remains, or burial goods, found in or on any land, are being disturbed or may be disturbed, by human activity without authority of law or by natural forces, shall immediately notify the local law enforcement agency with jurisdiction in the area in which the burial, remains, or goods are located. A person is guilty of a class B misdemeanor who is required to provide such notification and willfully, as defined in section 12.1-02-02, fails to provide the same.
 5. Any person who knows or has reasonable grounds to believe that that person has encountered or discovered a human burial site, human remains, or burial goods associated with a human burial, in or on any land, shall refrain from any activity which might disturb or immediately cease any continued activity which might cause further disturbance of such burial, remains, or goods and shall, as soon as practicable, report the presence or discovery of the burial, remains, or goods to the local law enforcement agency with jurisdiction in the area in which the burial, remains, or goods are located. A person is guilty of a class B misdemeanor who is required to make such report and willfully, as defined in section 12.1-02-02, fails to make the same. The requirements imposed in this subsection shall not apply to any person engaged in the salvaging excavation or other disinterment of a human burial under authority of law.
 6. Any person having been found guilty or having pleaded guilty, as a result of having been charged with an offense under subsection 2 or subsection 3, shall be ordered to forfeit to the state any and all

human remains and burial goods acquired in connection with the commission of the offense and may be ordered to forfeit to the state any and all equipment used in connection with the commission of the offense. In addition, any such person having been charged with an offense under subsection 3 shall be ordered to pay all reasonable costs actually incurred in the reinterment of the human remains and burial goods so forfeited. In conjunction with the prosecution of any offense under this subsection, the remains in question in the prosecution may, as deemed necessary, be subjected to nonintrusive, nondestructive professional study for the exclusive purpose of determining whether the remains are human.

7. ~~This section~~ Subsection 3 does not apply to the inadvertent opening disturbance of a human burial mounds site, unregistered historic graves, prehistoric graves, or prehistoric cemeteries when such remains would not appear to a reasonable person to be human, or human remains, or burial goods when the state department of health and consolidated laboratories and the state historical board have been notified of such discovery disturbance and such unregistered human remains and burial goods shall be studied and reinterred pursuant to rules adopted by the state department of health and consolidated laboratories and the state historical board. ~~This section~~ Subsection 3 also does not apply to situations in which the state department of health and consolidated laboratories and the state historical board are notified of the need to disinter and move prehistoric the contents of human remains burial sites which are recorded with the state historical board in order to prevent the destruction of such graves human burial sites by actions including, but not limited to, the construction of highways, dams, reservoirs, coal mines, power generation and transmission facilities, pipelines, farming practices, and other developments. Where feasible, such developments should avoid disturbance of prehistoric graves the human burial sites. In these situations such recorded disinterred human remains and burial goods must be studied and reinterred pursuant to rules adopted by the state department of health and consolidated laboratories and the state historical board.

SECTION 2. AMENDMENT. Section 55-03-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-01.1. Permit required to investigate, excavate, or otherwise record cultural resources on land owned by an instrumentality of the state of North Dakota and to excavate cultural resources on private land. Any individual, organization, institution, or company engaged on one's own behalf or on behalf of another in the investigation, excavation, or other recording of cultural resources on land owned by an instrumentality of the state of North Dakota or in the excavation of cultural resources on private land for any purposes other than those identified in section 55-03-01 first shall obtain a permit from the superintendent. Such permit may be issued when an application in such form and including such information as prescribed by the superintendent has been filed with such officer. Any such permit shall be granted only for the investigation, excavation, or other recording of cultural resources at the locations described in the application for permit. Each such application shall be accompanied by a fee of one hundred dollars.

*** SECTION 3. AMENDMENT.** Section 55-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-02. Contents of permit. Any permit issued pursuant to an application made as provided for in ~~sections 55-03-00.1, section 55-03-01, or section 55-03-01.1, 55-03-02, 55-03-03, 55-03-04, and 55-03-05~~ shall clearly describe the purpose of the permit and shall be in such form as prescribed by the superintendent. No permit shall be granted until the superintendent shall be satisfied that the applicant is professionally qualified to conduct that work for which a permit is required as provided for in ~~sections 55-03-00.1, section 55-03-01, or section 55-03-01.1, 55-03-02, 55-03-03, 55-03-04, and 55-03-05~~. When the cultural resources are on land owned by an instrumentality of the state of North Dakota, such permit will not be granted until the applicant has agreed to deliver to the superintendent all of the ~~articles,~~ fossil remains, and archaeological, paleontological, or historical materials ~~of a useful nature~~ found and removed from such land. When the cultural resources are on private land, such permit will not be granted until the applicant has agreed to deliver to the superintendent all of the human remains and burial goods, as such terms are defined in section 23-06-27, found and removed from such land. In all cases, a permit shall not be granted until the applicant has agreed to deliver to the superintendent copies of all records and reports as determined by the superintendent to be pertinent to the work performed.

SECTION 4. AMENDMENT. Section 55-03-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-03. Period for which permit granted - Revocation. Each permit issued pursuant to an application made as required by section 55-03-01 shall terminate on December thirty-first of the year in which it is issued. Any permit issued pursuant to the provisions of ~~sections 55-03-00.1, section 55-03-01, or section 55-03-01.1, 55-03-02, 55-03-03, 55-03-04, and 55-03-05~~ may be revoked by the superintendent at any time, if it appears to such officer that any identification, evaluation, or mitigation of adverse effects on cultural resources, historic buildings, structures, or objects performed by the permittee are being conducted negligently or improperly, or without regard for the careful preservation and conservation of the artifacts and materials they contain.

SECTION 5. AMENDMENT. Section 55-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-04. Fees deposited in revolving fund - Use. All fees collected by the superintendent under the provisions of ~~sections 55-03-00.1, 55-03-01, and 55-03-01.1, 55-03-02, 55-03-03, 55-03-04, and 55-03-05~~ shall be deposited in the revolving fund of the state historical board and shall be used by the superintendent for making investigations of permit applicants and for the management and analysis of records and artifacts submitted to the superintendent under the provisions of ~~sections 55-03-00.1, 55-03-01, 55-03-01.1, and 55-03-02, 55-03-03, 55-03-04, and 55-03-05~~.

**** SECTION 6. AMENDMENT.** Section 55-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-07. Violation of chapter - Penalty. Any person violating any provision of this chapter is guilty of a class ~~B~~ **A** misdemeanor and shall forfeit to the state all archaeological, paleontological, or historical

*** NOTE:** Section 55-03-02 was also amended by section 11 of Senate Bill No. 2218, chapter 645.

**** NOTE:** Section 55-03-07 was also amended by section 12 of Senate Bill No. 2218, chapter 645.

articles and materials discovered by ~~him~~ that person. Any such violation shall be held to be committed in the county where the exploration or excavation for archaeological, paleontological, or historical material was undertaken.

SECTION 7. REPEAL. Section 55-03-05 of the North Dakota Century Code is hereby repealed.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 5, 1989

Filed April 6, 1989

CHAPTER 308

SENATE BILL NO. 2483
(Senators Nalewaja, Maxson)
(Representatives J. DeMers, Wentz)

DETERMINATION OF DEATH

AN ACT to adopt the Uniform Determination of Death Act, relating to the legal requirements for determination of death, and to provide notice in case of imminent death.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Determination of death. An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

SECTION 2. Notice to family in case of imminent death. If it appears to a physician who has primary responsibility for the treatment and care of an individual that the death of the individual is imminent, the physician shall make reasonable efforts to notify the individual's next of kin. If after making reasonable efforts the next of kin are not notified, the physician shall document in the medical records of the individual the efforts made to notify the next of kin. If notice is given, the physician shall provide the next of kin with appropriate information regarding the individual's medical condition and available medical therapies.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 309

HOUSE BILL NO. 1481
(Representatives J. DeMers, Kolbo, Clayburgh)
(Senators Mushik, Redlin)

TERMINAL CONDITION TREATMENT OPTION

AN ACT to define the rights and responsibilities of the terminally ill to control decisions regarding administration of life-prolonging treatment; and to provide penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Legislative intent. Every competent adult has the right and the responsibility to control the decisions relating to the adult's own medical care, including the decision to have medical or surgical means or procedures calculated to prolong the adult's life provided, withheld; or withdrawn. Communication about such matters is encouraged between each person and the person's family, the physician, and other health care providers. Sections 2 through 14 of this Act do not condone, authorize, approve, or permit mercy killing, euthanasia, or assisted suicide or permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

SECTION 2. Definitions. In sections 2 through 14 of this Act, unless the context otherwise requires:

1. "Attending physician" means the physician who has primary responsibility for the treatment and care of the patient.
2. "Declaration" means a writing executed in accordance with the requirements of subsection 1 of section 3.
3. "Health care provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.
4. "Life-prolonging treatment" means any medical procedure, treatment, or intervention that, when administered to a qualified patient, will serve only to prolong the process of dying and where, in the judgment of the attending physician, death will occur whether or not the treatment is utilized. The term does not include the provision of appropriate nutrition and hydration or the performance of any medical procedure necessary to provide comfort, care, or alleviate pain.
5. "Physician" means an individual licensed to practice medicine in this state pursuant to chapter 43-17.

6. "Qualified patient" means a patient eighteen or more years of age who has executed a declaration and who has been determined by the attending physician and another physician who has personally examined the patient to be in a terminal condition.
7. "Terminal condition" means an incurable or irreversible condition that, without the administration of life-prolonging treatment, will result, in the opinion of the attending physician, in imminent death. The term does not include any form of senility, Alzheimer's disease, mental retardation, mental illness, or chronic mental or physical impairment, including comatose conditions that will not result in imminent death.

SECTION 3. Declaration relating to use of life-prolonging treatment.

1. An individual of sound mind and eighteen or more years of age may execute at any time a declaration governing the use, withholding, or withdrawal of life-prolonging treatment. The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by two individuals who are not:
 - a. Related to the declarant by blood or marriage;
 - b. Entitled to any portion of the estate of the declarant under any will of the declarant or codicil to the will existing by operation of law or otherwise, at the time of the declaration;
 - c. Claimants against any portion of the estate of the declarant at the time of the execution of the declaration;
 - d. Directly financially responsible for the declarant's medical care;
 - e. Attending physicians of the declarant.
2. If the declarant is a resident of a long-term care facility, as defined in section 50-10.1-01, at the time the declaration is executed, one of the two witnesses to the declaration must be a regional long-term care ombudsman as provided in section 50-10.1-02.
3. A declaration must be substantially in the form set forth in subdivision a or b, as applicable, but the declaration may include additional specific directives. The invalidity of any additional specific directives does not affect the validity of the declaration.
 - a. A declaration to withdraw or withhold life-prolonging treatment must be substantially in the following form:

Declaration made this ____ day of _____ (month, year).

I, _____, being at least eighteen years of age and of sound mind, willfully and voluntarily make known my desire that my life must not be artificially prolonged under the circumstances set forth below, and do hereby declare:

1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-prolonging treatment would serve only to artificially prolong the process of my dying and my attending physician determines that my death is imminent whether or not life-prolonging treatment is utilized, I direct that such treatment be withheld or withdrawn, and that I be permitted to die naturally.
2. In the absence of my ability to give directions regarding the use of such life-prolonging treatment, it is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of that refusal, which is death.
3. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this declaration is not effective during the course of my pregnancy.
4. I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.
5. I understand that I may revoke this declaration at any time.

Signed _____

City, County, and State of Residence _____

The declarant has been personally known to me and I believe the declarant to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate upon the declarant's death. I am not the declarant's attending physician, a person who has a claim against any portion of the declarant's estate upon the declarant's death, or a person directly financially responsible for the declarant's medical care.

Witness _____

Witness _____

- b. A declaration to direct the use of life-prolonging treatment must be substantially in the following form:

Declaration made this _____ day of _____ (month, year).

I, _____, being at least eighteen years of age and of sound mind, willfully and voluntarily make known my desire to extend my life under the circumstances set forth below, and do hereby declare:

1. If at any time I should have an incurable condition caused by injury, disease, or illness certified to be a terminal condition by two physicians, I direct the use of life-prolonging treatment that could extend my life.

2. In the absence of my ability to give directions regarding the use of such life-prolonging treatment, it is my intention that this declaration be honored by my family and physicians as the final expression of my legal right to direct medical or surgical treatment and accept the consequences of that directive.
3. I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.
4. I understand that I may revoke this declaration at any time.

Signed _____
City, County, and State of Residence _____

The declarant has been personally known to me and I believe the declarant to be of sound mind. I am not related to the declarant by blood or marriage, nor would I be entitled to any portion of the declarant's estate upon the declarant's death. I am not the declarant's attending physician, a person who has a claim against any portion of the declarant's estate upon the declarant's death, or a person directly financially responsible for the declarant's medical care.

Witness _____
Witness _____

4. A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, promptly so advise the declarant.

SECTION 4. When declaration operative. A declaration becomes operative when it is communicated to the attending physician, and the declarant is determined by the attending physician and another physician to be in a terminal condition and no longer able to make decisions regarding administration of life-prolonging treatment. A declaration made under section 3 of this Act does not obligate the physician to use, withhold, or withdraw life-prolonging treatment but is presumptive evidence of the declarant's desires concerning the use, withholding, or withdrawal of such treatment and must be given great weight by the physician in determining the intent of the incompetent declarant.

SECTION 5. Revocation of declaration.

1. A declaration may be revoked at any time and in any manner by the declarant, provided the declarant is competent, including by:
 - a. A signed, dated writing;
 - b. Physical cancellation or destruction of the declaration by the declarant or another in the declarant's presence and at the declarant's direction; or
 - c. An oral expression of intent to revoke.

2. A revocation is effective upon communication to the attending physician or other health care provider by the declarant or a witness to the revocation.
3. The attending physician or other health care provider shall make the revocation a part of the declarant's medical record.

SECTION 6. Recording determination of terminal condition and declaration. Upon determining that the declarant is in a terminal condition, the attending physician who knows of a declaration shall record the determination and the terms of the declaration in the declarant's medical record.

SECTION 7. Management of qualified patients.

1. A qualified patient may make decisions regarding life-prolonging treatment as long as the patient is competent.
2. Sections 2 through 14 of this Act do not affect the responsibility of the attending physician or other health care provider to provide treatment for a patient's comfort care or alleviation of pain.
3. Sections 2 through 14 of this Act do not affect the responsibility of the attending physician or other health care provider to provide nutrition and hydration. Nutrition and hydration may be withheld from a patient with a terminal condition if the nutrition and hydration could not be physically assimilated by the patient or would be physically harmful or unreasonably painful to the patient.
4. Notwithstanding a declaration executed under this Act, medical treatment must be provided to a pregnant patient with a terminal condition unless, to a reasonable degree of medical certainty as certified on the patient's medical chart by the attending physician and an obstetrician who has examined the patient, such medical treatment will not maintain the patient in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful or unreasonably painful to the patient or will prolong severe pain that cannot be alleviated by medication.

SECTION 8. Transfer of patients. An attending physician or other health care provider who is unwilling to comply with sections 2 through 14 of this Act shall take, as promptly as practicable, all reasonable steps to transfer care of the declarant to another physician or health care provider who is willing to comply with sections 2 through 14 of this Act.

SECTION 9. Immunities.

1. In the absence of knowledge of the revocation of a declaration, a person is not subject to civil or criminal liability or discipline for unprofessional conduct for carrying out the declaration pursuant to the requirements of sections 2 through 14 of this Act.
2. A physician or other health care provider, whose actions are authorized by sections 2 through 14 of this Act, is not subject to criminal or civil liability or discipline for unprofessional

conduct with respect to those actions unless done in a grossly negligent manner.

SECTION 10. Penalties.

1. An individual who willfully conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a class A misdemeanor.
2. An individual who falsifies or forges the declaration of another, or willfully conceals or withholds personal knowledge of a revocation as provided in section 5, is guilty of a class C felony.
3. A person who requires or prohibits the execution of a declaration as a condition for being insured for, or receiving, health care services is guilty of a class A misdemeanor.
4. A person who coerces or fraudulently induces another to execute a declaration under this Act is guilty of a class C felony.
5. The sanctions provided in this section do not displace any sanction applicable under other law.

SECTION 11. Miscellaneous provisions.

1. Death resulting from the withholding or withdrawal of life-prolonging treatment pursuant to a declaration and in accordance with sections 2 through 14 of this Act does not constitute, for any purpose, a suicide or homicide.
2. The making of a declaration under section 3 does not affect in any manner the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance or annuity. A policy of life insurance or annuity is not legally impaired or invalidated in any manner by the withholding or withdrawal of life-prolonging treatment from an insured qualified patient, notwithstanding any term to the contrary.
3. A person may not prohibit or require the execution of a declaration as a condition for being insured for, or receiving, health care services.
4. This Act creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-prolonging treatment in the event of a terminal condition.
5. Sections 2 through 14 of this Act do not affect the right of a patient to make decisions regarding use of life-prolonging treatment, so long as the patient is able to do so, or impair or supersede any right or responsibility that a person has to effect the provision, withholding, or withdrawal of medical care.

6. Sections 2 through 14 of this Act do not require any physician or other health care provider to take any action contrary to reasonable medical standards.

SECTION 12. When health care provider may presume validity of declaration. In the absence of knowledge to the contrary, a physician or other health care provider may presume that a declaration complies with sections 2 through 14 of this Act and is valid.

SECTION 13. Recognition of declaration executed in another state. A declaration executed in another state by a resident of that state in compliance with the law of that state or of this state is validly executed for purposes of sections 2 through 14 of this Act.

SECTION 14. Effect of previous declaration. An instrument executed before the effective date of this Act, which basically complies with the intent of subsection 1 of section 3 of this Act, must be given effect pursuant to this Act. A previously executed instrument that purports to comply with the intent of this Act is valid for five years from the effective date of this Act unless the declarant becomes incompetent within five years after the execution of the declaration and remains incompetent at the time of the determination of a terminal condition under section 4 of this Act, in which case the declaration continues in effect. When the declaration expires, a new declaration must be executed if the declarant wishes to make a written declaration under this Act.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 310

SENATE BILL NO. 2049
(Legislative Council)
(Interim Judiciary Committee)

AIDS REPORTING

AN ACT to create and enact sections 23-07-02.1 and 23-07-02.2 of the North Dakota Century Code, relating to the reporting of cases of human immunodeficiency virus infection; to amend and reenact sections 23-07-02 and 23-07-21 of the North Dakota Century Code, relating to reportable diseases and penalties; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-02. Who to report reportable diseases. ~~The~~ Except as otherwise provided by section 23-07-02.1, the following persons shall report to the nearest health officer having jurisdiction any reportable disease coming to ~~his~~ their knowledge:

1. All physicians.
2. All persons who treat or administer to the sick by whatever method.
3. Householders.
4. Keepers of hotels, boardinghouses, or lodginghouses.
5. Nurses.
6. Schoolteachers.
7. All other persons treating, nursing, lodging, caring for, or having knowledge of the existence of any reportable disease.

If the person reporting is the attending physician, ~~he~~ the physician shall report not less than twice a week, in the form and manner directed by the state department of health and consolidated laboratories, the condition of the person afflicted and the state of the disease.

SECTION 2. Section 23-07-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-07-02.1. Reports of human immunodeficiency virus infection - Penalty. Every attending physician treating an individual known by the physician to have a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, shall

make a report on that individual to the state department of health and consolidated laboratories. All persons, other than an attending physician, treating an individual known to have human immunodeficiency virus infection in a hospital, clinic, sanitarium, penal institution, or other private or public institution shall make a report on that individual to an official designated by the respective facility to receive reports of significant infectious diseases within the facility. The designated official shall, if satisfied that the report is valid, make a report to the department on each individual having a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, unless the diagnosed individual's attending physician has made such a report. The reports required under this section must contain the name, date of birth, sex, and address of the individual reported on and the name and address of the physician or designated official making the report. Failure by a facility to designate an official to whom reports must be made is an infraction. Any person who in good faith complies with this section is immune from civil and criminal liability for any action taken in compliance with this section.

SECTION 3. Section 23-07-02.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-07-02.2. Confidentiality of reports. A report required by section 23-07-02.1 and held by the state department of health and consolidated laboratories is strictly confidential information. The information may not be released, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except that:

1. Release may be made of medical or epidemiologic information for statistical purposes in a manner such that no individual person can be identified;
2. Release may be made of medical or epidemiologic information to the extent necessary to enforce section 23-07-02.1 and this section and related rules concerning the treatment, control, and investigation of human immunodeficiency virus infection by public health officials; or
3. Release may be made of medical or epidemiologic information to medical personnel to the extent necessary to protect the health or life of any individual.

No officer or employee of the state department of health and consolidated laboratories may be examined in any judicial, executive, legislative, or other proceeding regarding the existence or content of any individual's report retained by the department under section 23-07-02.1.

* SECTION 4. AMENDMENT. Section 23-07-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-21. Penalties. Any Except as otherwise provided in this section, any person:

1. Who violates or fails to obey any of the provisions of this chapter, any lawful rule or regulation made by the state department

* NOTE: Section 23-07-21 was also amended by section 11 of Senate Bill No. 2048, chapter 181.

of health and consolidated laboratories, or any order issued by any state, district, county, or municipal health officer;

2. Who violates any quarantine law or regulation, or who leaves a quarantined area without being discharged; or
3. Who, knowing that he is infected with a venereal disease, willfully exposes another person to infection,

is guilty of an infraction. Any person required to make a report under section 23-07-02.1 who releases or makes public confidential information or otherwise breaches the confidentiality requirements of section 23-07-02.2 is guilty of a class C felony.

Approved March 31, 1989

Filed March 31, 1989

CHAPTER 311

SENATE BILL NO. 2054
(Legislative Council)
(Interim Judiciary Committee)

SCHOOL DISTRICT CONTAGIOUS DISEASE POLICY

AN ACT to create and enact a new section to chapter 23-07 of the North Dakota Century Code, relating to adoption by school districts of a policy governing the disposition of students, employees, and independent contractors with significant contagious diseases; and to amend and reenact section 23-07-16 of the North Dakota Century Code, relating to school attendance by a child with a significant contagious or infectious disease.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07-16. Child having contagious or infectious disease prohibited from attending school - Exception. No Except as provided by section 2 of this Act, no principal, superintendent, or teacher of any school, and no parent or guardian of any minor child, shall permit any child having any significant contagious or infectious disease, or any child residing in any house in which any such disease exists or has recently existed, to attend any public or private school until permitted to do so under the regulations of the local board of health.

SECTION 2. A new section to chapter 23-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

School district to adopt policy relating to significant contagious diseases. Each school district shall adopt a policy governing the disposition of children attending school within the school district, employees of the school district, or independent contractors under contract with the school district who are diagnosed as having a significant contagious disease. The state department of health and consolidated laboratories shall, with advice from the superintendent of public instruction, adopt rules establishing guidelines for the policy. The guidelines may include methods and procedures relating to a determination of whether and under what conditions a child with a significant contagious disease may not continue attending school or whether and under what conditions an employee or an independent contractor with a significant contagious disease may not continue in a work assignment.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 312

HOUSE BILL NO. 1134
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health
and Consolidated Laboratories)

DISEASE CONTROL RECORDS DISCLOSURE

AN ACT to create and enact a new section to chapter 23-07 of the North Dakota Century Code, relating to disclosure of disease control records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Disclosure of records. To protect the integrity of disease control records, to ensure their proper use, and to ensure efficient and proper administration of the department's disease control function, it is unlawful for any person to permit inspection of or to disclose information contained in disease control records, including results of laboratory tests, or to copy or issue a copy of all or part of any such record except as authorized by rules.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 313

HOUSE BILL NO. 1079
(R. Larson)

CONTAGIOUS DISEASE DISCLOSURES

AN ACT to create and enact a new section to chapter 23-07.3 of the North Dakota Century Code, relating to disclosure of confidential information concerning exposure to contagious diseases; to amend and reenact sections 23-07.3-01 and 23-07.3-02 of the North Dakota Century Code, relating to notification of exposure to contagious diseases; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07.3-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07.3-01. Definitions. In ~~sections 23-07.3-01 and 23-07.3-02~~ this chapter, unless the context or subject matter otherwise requires:

1. "Contagious disease" means the interruption, cessation, or disorder of body functions, systems, or organs transmissible by association with the sick or their secretions or excretions, excluding the common cold.
2. "Department" means the state department of health and consolidated laboratories.
3. "Emergency medical technician" services provider" means a firefighter, law enforcement officer, or other person trained and authorized by law or rule to render emergency medical assistance or treatment.
- ~~2-~~ "Infectious disease" means the interruption, cessation, or disorder of body functions, systems, or organs transmissible by association with the sick or their secretions or excretions, excluding the common cold.
- ~~3-~~ 4. "Licensed facility" means a hospital, nursing home, dialysis center, or any entity licensed by the state to provide medical care.
5. "Significant exposure" means:
 - a. Contact of broken skin or mucous membrane with a patient's blood or bodily fluids other than tears or perspiration;
 - b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or

- c. Exposure that occurs by any other method of transmission defined by the department as a significant exposure.

SECTION 2. AMENDMENT. Section 23-07.3-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-07.3-02. Notification of infectious diseases. A licensed facility, medical clinic, or physician's office that receives a patient who is subsequently diagnosed as having an infectious disease shall notify the employer of any fireman or emergency medical technician who transported the patient to the facility, or who administered care to the patient during transportation, of the employee's exposure to the infectious disease. The notification must be made within forty-eight hours of confirmation of the diagnosis. The employer shall request the employee to contact the licensed facility to determine the infectious disease to which the employee has been exposed and to receive the appropriate medical direction for dealing with the infectious disease. Notification must be conducted in a manner that protects the confidentiality of the patient and fireman and emergency medical technician. Procedures following significant exposure.

1. If an emergency medical services provider has a significant exposure in the process of caring for a patient, the emergency medical services provider shall document that exposure. The documentation must be on forms approved by the department, and in the manner and time designated by the department.
2. Upon notification of a significant exposure, or upon receipt of the documentation described in subsection 1, the attending physician shall request the patient to consent to testing to determine the presence of any contagious disease. The patient must be informed that the patient may refuse to consent to the test and, if the patient refuses, that the fact of the patient's refusal will be forwarded to the emergency medical services provider. If the patient consents to testing, the attending physician shall test for the presence of contagious disease.
3. If a patient who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained from the patient's next of kin or legal guardian. If a patient who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received the patient, testing for the presence of any contagious disease must be conducted.
4. The attending physician that conducted the test under this section shall report the results of the test to the department and to the emergency medical services provider who reported the significant exposure. The physician shall use a case number instead of the patient's name in making a report to the emergency medical services provider who requested the test to ensure the confidentiality of the patient's identity.

SECTION 3. A new section to chapter 23-07.3 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Penalty. A person authorized to receive information that is confidential under this chapter, other than the individual identified in the information, who releases or makes public that confidential information is guilty of a class C felony.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 314

SENATE BILL NO. 2050
(Legislative Council)
(Interim Judiciary Committee)

AIDS TESTING

AN ACT to provide for informed consent to testing for antibodies to the human immunodeficiency virus and confidentiality of test results; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Health care provider" means any person licensed, certified, or otherwise authorized by the law of this state to provide health care services.
2. "Health care services" means any services included in the furnishing to any individual of hospitalization, or medical or dental care, or any services incident to the furnishing of that care or hospitalization, as well as the furnishing to any person of any other services for the purpose of preventing, alleviating, curing, or healing human illness or injury.
3. "Human immunodeficiency virus" means any identified causative agent of acquired immune deficiency syndrome.
4. "Human immunodeficiency virus infection" means the pathological state produced by a human body in response to the presence of the human immunodeficiency virus.
5. "Informed consent form" means a printed document on which an individual may signify that individual's informed consent for testing for the presence of an antibody to the human immunodeficiency virus or authorize the disclosure of any test results obtained.
6. "Informed consent for testing or disclosure" means written consent on an informed consent form by an individual to the administration of a test to that individual for the presence of an antibody to the human immunodeficiency virus or to the disclosure to a specified person of the results of a test administered to the consenting individual.

SECTION 2. Informed consent for testing or disclosure - Exception.

1. Except when testing and disclosure is otherwise provided for by law, a health care provider, blood bank, blood center, or plasma

center may not subject a person to a test for the presence of an antibody to the human immunodeficiency virus unless the subject of the test first provides informed consent for testing or disclosure as provided under subsection 2.

2. A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of an antibody to the human immunodeficiency virus under subsection 1 shall provide the potential test subject with an informed consent form and shall obtain the potential test subject's signature on the form. The form must contain:
 - a. The name of the potential test subject who is giving consent and whose test results may be disclosed.
 - b. A statement of explanation to the potential test subject that the test results may be disclosed as provided under subsection 1 of section 5 of this Act and either a listing of the persons or circumstances specified under subsection 1 of section 5 of this Act or a statement that the listing is available upon request.
 - c. Spaces specifically designated for the following purposes:
 - (1) The signature of the potential test subject providing informed consent for the testing and the date on which the consent is signed; and
 - (2) The name of a person to whom the potential test subject authorizes that disclosure of test results be made, if any; the date on which the consent to disclosure is signed; and the time period during which the consent to disclosure is effective.

SECTION 3. Written consent to disclosure. An individual who is tested for the presence of an antibody to the human immunodeficiency virus may authorize in writing a health care provider, blood bank, blood center, or plasma center to disclose the test results to any person at any time after providing informed consent for disclosure. A record of this consent must be maintained by the health care provider, blood bank, blood center, or plasma center authorized to disclose test results.

SECTION 4. Record maintenance. A health care provider, blood bank, blood center, or plasma center that obtains a specimen of body fluids or tissues for the purpose of testing for the presence of an antibody to the human immunodeficiency virus shall:

1. Obtain from the subject informed consent for testing or disclosure, unless testing and procedures for disclosure are otherwise provided by law.
2. Maintain a record of the consent received under subsection 1.
3. Maintain a record of the test results obtained.

SECTION 5. Confidentiality of test results.

1. Except as provided in this section, the results of a test for the presence of an antibody to the human immunodeficiency virus may be disclosed only to the following persons:
 - a. The subject of the test.
 - b. The test subject's health care provider, including those instances in which a health care provider provides emergency care to the subject.
 - c. An agent or employee of the test subject's health care provider under subdivision b who provides patient care or handles or processes specimens of body fluids or tissues.
 - d. A blood bank, blood center, or plasma center that subjects a person to a test under subsection 2 of section 2 of this Act for any of the following purposes:
 - (1) Determining the medical acceptability of blood or plasma secured from the test subject.
 - (2) Notifying the test subject of the test results.
 - (3) Investigating human immunodeficiency virus infections in blood or plasma.
 - e. A health care provider who procures, processes, distributes, or uses a human body part donated for a purpose specified under chapter 23-06.1 for the purpose of assuring medical acceptability of the gift for the purpose intended.
 - f. The state health officer or the state health officer's designee, for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.
 - g. An embalmer licensed under chapter 43-10.
 - h. A health care facility staff committee or accreditation or health care services review organization for the purposes of conducting program monitoring and evaluation and health care services reviews.
 - i. A person who conducts research, for the purpose of research, if the researcher:
 - (1) Is affiliated with the test subject's health care provider under subdivision c;
 - (2) Has obtained permission to perform the research from an institutional review board; and
 - (3) Provides written assurance to the person disclosing the test results that use of the information requested is only for the purpose for which it is provided to the researcher, the information will not be released to a person not connected with the study, and the final

research product will not reveal information that may identify the test subject unless the researcher has first received informed consent for disclosure from the test subject.

2. The results of a test may be disclosed under a lawful order of a court of record.
3. The individual who is tested may authorize disclosure to any person.

SECTION 6. Expanded disclosure of test results prohibited. A person to whom the results of a test for the presence of an antibody to the human immunodeficiency virus have been disclosed under subsection 1 of section 5 of this Act may not disclose the test results except as provided under that subsection.

SECTION 7. Civil liability. Any person who violates section 2, subsection 1 of section 5, or section 6 of this Act is liable to the subject of the test for actual damages and costs plus exemplary damages. The plaintiff in an action under this section has the burden of proving by preponderance of the evidence that a violation occurred under section 2, subsection 1 of section 5, or section 6 of this Act. A conviction for violation of this Act is not a condition precedent to bringing an action under this section.

SECTION 8. Penalty. A person who intentionally discloses the results of a blood test in violation of subsection 1 of section 5 of this Act and thereby causes bodily or psychological harm to the subject of the test is guilty of a class C felony.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 315

HOUSE BILL NO. 1088
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of
Health and Consolidated Laboratories)

BED AND BREAKFAST FACILITIES

AN ACT to create and enact four new sections to chapter 23-09.1 of the North Dakota Century Code, relating to bed and breakfast facilities; and to amend and reenact section 23-09.1-01 of the North Dakota Century Code, relating to bed and breakfast facilities; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-09.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-09.1-01. Definitions. As used in this chapter:

1. "Bed and breakfast facility" means a private home which is used to provide accommodations for a charge to the public, with at most two lodging units for up to eight persons per night and in which no more than two family style meals per day are provided.
2. "Department" means the North Dakota state department of health and consolidated laboratories.
3. "Family style meal" means a meal ordered by persons staying at a bed and breakfast facility which is served from common food service containers, as long as any food not consumed by those persons is not reused or fed to other people if the food is unwrapped.

SECTION 2. Four new sections to chapter 23-09.1 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Inspection. The department shall inspect each bed and breakfast facility at least once per year. Any duly authorized officer, employee, or agent of the department may enter and inspect any property or place on or at which a bed and breakfast facility is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and rules adopted under this chapter.

License required - Application - Issuance. Before any bed and breakfast facility may operate in this state it must be licensed by the department. Licenses expire on December thirty-first following the date of issuance unless canceled by failure to comply with this chapter or with any of the rules adopted under this chapter. Renewal application for license

must be made to the department during December of every year. A license must be issued upon compliance by the applicant with provisions of this chapter and any rules adopted under this chapter. The application must be in writing on forms furnished by the department and must be accompanied by the required fee. Licenses issued by the department are not transferable nor applicable to any premises other than those for which the license was issued.

Injunction proceedings. Whenever in the judgment of the department any person has engaged in or is about to engage in any acts or practices which constitute a violation of this chapter, or any rule or order issued under this chapter, the department may maintain an action in the name of the state enjoining the action or practices or for an order directing compliance and, upon a showing by the department that the person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

Penalty. Any person who willfully violates this chapter or any rule or order of the department must be punished by a civil penalty of not more than three hundred dollars per day of violation.

Approved March 16, 1989

Filed March 16, 1989

CHAPTER 316

SENATE BILL NO. 2262
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of Health
and Consolidated Laboratories)

HOME-PREPARED FOODS

AN ACT to declare legislative intent; to create and enact chapter 23-09.2 of the North Dakota Century Code, relating to education of food preparers; to amend and reenact subsections 14 and 15 of section 43-15-10 of the North Dakota Century Code, relating to powers of the state board of pharmacy; and to repeal sections 19-02-13, 19-02-14, 19-02-15, 19-02-16, 19-02-17, 19-02-18, 19-02-19, 19-02-20, 19-02-21, 19-02-22, 19-02-23, and 19-02-24 of the North Dakota Century Code, relating to food and drug regulation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE INTENT. Because facilities are not always available for the preparation of food onsite by nonprofit public-spirited organizations not regularly engaged in the business of selling food or to persons not regularly engaged in the business of preparing or selling food and who prepare food for sale directly to the ultimate consumer at a farmers' market, bake sale, or similar enterprise, it is the intent of the legislative assembly to exempt organizations and persons in those situations from preparing food in licensed or approved kitchens. Because the unintentional mishandling of food may jeopardize the public health and welfare, whether the mishandling is done by an establishment open to public patronage or by a nonprofit public-spirited organization or a person providing a limited type of food service, it is the intent of the legislative assembly to authorize the department of health and consolidated laboratories to offer educational support to food preparers.

SECTION 2. Chapter 23-09.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-09.2-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Department" means the department of health and consolidated laboratories.
2. "Food preparer" means any person who manufactures, processes, sells, handles, or stores food and who is not required to obtain a license from the department under chapter 19-02.1, 23-09, or 23-09.1.
3. Any term used in this chapter has the same meaning as when used in a comparable context in chapters 19-02.1, 23-09, and 23-09.1.

23-09.2-02. Rules. The department may adopt rules regarding education of food preparers.

23-09.2-03. Minor violations. The department, local boards of health, and district health units shall attempt to resolve minor violations of this chapter through education. The department, local boards of health, and district health units are not required to report for prosecution minor violations of this chapter.

23-09.2-04. Exclusions. This chapter does not apply to private homes where food is prepared or stored for individual family consumption and to the use of home-canned goods, nongrade A dairy products and food prepared using nongrade A dairy products, and to meat not inspected under the Federal Meat Inspection Act [34 Stat. 1260-1265; 21 U.S.C. 603 et seq.].

SECTION 3. AMENDMENT. Subsections 14 and 15 of section 43-15-10 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

14. To make, adopt, amend, and repeal rules as may be deemed necessary by the board from time to time for the proper administration and enforcement of this chapter, ~~chapters 19-02 and chapter 19-02.1~~ as ~~those chapters pertain~~ that chapter pertains to drugs, subject to approval of the director of the state department of health and consolidated laboratories, and chapter 19-03.1 subject to approval of the controlled substances board.
15. The board or its authorized representatives may investigate and gather evidence concerning alleged violations of the provisions of chapter 43-15, ~~chapters 19-02 and chapter 19-02.1~~ that ~~pertain~~ pertains to drugs, chapters 19-03.1, 19-03.2, and 19-04, or of the rules of the board. Board investigative files are confidential and may not be considered public records or open records for purposes of section 44-04-18, until a complaint is filed or a decision made by the board not to file a complaint.

SECTION 4. REPEAL. Sections 19-02-13, 19-02-14, 19-02-15, 19-02-18, 19-02-19, 19-02-21, 19-02-22, and 19-02-23 of the North Dakota Century Code, and sections 19-02-16, 19-02-17, 19-02-20, and 19-02-24 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 317

HOUSE BILL NO. 1197

(Committee on Human Services and Veterans Affairs)
(At the request of the Office of Management and Budget)

BASIC CARE FACILITY LICENSING

AN ACT to create and enact a new chapter to title 23 and a new section to chapter 50-06 of the North Dakota Century Code, relating to basic care facilities under the jurisdiction of the state department of health and consolidated laboratories and the establishment of reasonable rates for basic care facilities by the department of human services; to amend and reenact sections 23-16-01, 50-02-04, subsection 8 of section 50-06-01.4, section 50-06-14.1, subsection 3 of section 50-10.1-01, subsection 3 of section 50-10.2-01, sections 50-21-01, 50-21-02, 50-21-03, 50-21-04, and subsections 17 and 24 of section 57-39.2-04 of the North Dakota Century Code, relating to transfer of the authority of the department of human services over homes for the aged and infirm to the department of health and consolidated laboratories; to repeal sections 50-18-01, 50-18-01.1, 50-18-01.2, 50-18-02, 50-18-02.1, 50-18-03, 50-18-03.1, 50-18-04, 50-18-05, 50-18-06, 50-18-06.1, 50-18-06.2, 50-18-07, and 50-18-08 of the North Dakota Century Code, relating to boarding homes for the aged and infirm under the jurisdiction of the department of human services; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 23 of the North Dakota Century Code is hereby created and enacted to read as follows:

Basic care facility - Defined. As used in this chapter, the term "basic care facility" means any place, not licensed by the department of health and consolidated laboratories, hereinafter referred to as the department, under chapter 26-16, operated by any person, institution, organization, or private or public corporation, in which five or more individuals not related by blood or marriage to the owner or manager of the place, are received, kept, and provided with food, shelter, and care for hire or compensation. Care for hire or compensation to assist residents with functional impairments includes routine maintenance and supportive care with activities of daily living and instrumental activities of daily living which need not be provided in an institutional setting by trained and skilled medical personnel, can be administered without any possible harm to the health of the individual in care, and has no significant relationship to medical care of any type. Any place that assists its residents with walking, dressing, or toilet usage, or which promotes supervision of person, or which employs any staff to aid residents in addition to cooks or maids for cleaning, is considered to be a basic care facility subject to regulation by the department.

Residential areas - Nongeriatric persons. A nursing home, intermediate care facility, basic care facility, or any combination of a nursing home, intermediate care facility, or basic care facility may establish residential areas specifically for inhabitation by nongeriatric persons subject to any reasonable rules adopted by the department.

Access to pharmacist. Irrespective of the type of distribution system used, no person may refuse to allow a resident of a basic care facility to choose a pharmacist of the resident's choice for the compounding and dispensing of drugs pursuant to chapter 43-15.

Department to establish standards - Licensing - Inspection - Prosecute violations. It is the duty of the department to establish standards for basic care facilities. The department shall inspect all places and grant annual licenses to basic care facilities as conform to the standards established and comply with the rules prescribed, as provided in this chapter. The department shall prosecute all violations of this chapter. Upon request of the department, the state fire marshal shall inspect any place for which a license is applied or issued and shall report these findings to the department.

License required - Term - Revocation. No person, institution, organization, or public or private corporation may keep, operate, conduct, or manage a basic care facility without holding a valid license issued by the department. The license is not valid for more than one year. Any license may be revoked by the department for violation of this chapter or the rules adopted by the department.

Injunction. The department may apply to the district court of the county in which the basic care facility is located for, and the court has jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from establishing, conducting, managing, or operating any basic care facility without obtaining a license under this chapter.

Contents of license. The license must show the name of the owner or manager of the basic care facility, its location, and the maximum number of persons that may be received and kept in the basic care facility at any one time.

Records kept by basic care facility. A record of every individual admitted to any basic care facility must be kept at the place licensed by the owner or manager in the manner and form prescribed by the department.

Authority to adopt rules. The department may adopt rules necessary to carry out its responsibilities under this chapter. Rules adopted by agencies prior to January 1, 1990, which relate to functions or agencies covered by this chapter, remain in effect until they are specifically amended or repealed by the department.

Rules on services to nongeriatric persons. The department shall adopt rules under chapter 23-16 for patient and resident care and quality care review which are not in conflict with any federal laws, and as are necessary to ensure the appropriate medical, social, and psychological services to nongeriatric persons residing in a nursing home, intermediate care facility, basic care facility, or any combination of a nursing home, intermediate care facility, or basic care facility.

Department to furnish information when requested. If called upon by any person, organization, corporation, or community interested in establishing a basic care facility the department shall furnish information concerning the laws and rules governing operation of a basic care facility.

Penalty. Any person who violates any provision of this chapter is guilty of a class B misdemeanor.

SECTION 2. AMENDMENT. Section 23-16-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-16-01. Licensure of medical hospitals and state hospitals. After July 1, 1947, no person, partnership, association, corporation, county or municipal corporation, or agency thereof, which maintains and operates organized facilities for the diagnosis, treatment or care of two or more nonrelated persons suffering from illness, injury, or deformity, or where obstetrical or other care is rendered over a period exceeding twenty-four hours shall be established, conducted, or maintained in the state of North Dakota without obtaining annually a license therefor in the manner hereinafter provided in sections 23-16-02 and 23-16-03. Hospitals maintained and operated by the state social service board such as those for the aged and infirm and those for unmarried mothers and chiropractic hospitals and sanatoriums are not required to obtain a license under this chapter Chiropractic hospitals, sanatoriums, and hospitals such as those for unmarried mothers maintained and operated by the department of human services are not required to obtain a license under this chapter. In the case of hospitals maintained and operated by the state or in the case of homes licensed by the state social service board, the state department of health and consolidated laboratories shall have the responsibility of inspecting, rendering consultation service, and making recommendations on phases of hospital administration covered in the standards promulgated by the health council. The state hospital located at Jamestown may also obtain an annual license from the state department of health and consolidated laboratories as provided for in sections 23-16-02 and 23-16-03.

In the case of emergency or transfer beds attached to and forming a part of a licensed medical doctor's office the state department of health and consolidated laboratories shall have the right of inspection, but no license shall be required under the provisions of this chapter when the number of such beds does not exceed four.

SECTION 3. AMENDMENT. Section 50-02-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-02-04. Residence in counties - How gained. If no type of public assistance or poor relief, whether county, state, or federal, has been received, residence in a county, for poor relief purposes, shall be gained as follows:

1. Each person over the age of eighteen years, who has resided one year continuously in any county in this state, shall be deemed to have residence in such county.
2. Each person who has resided one year continuously in the state, but not in any one county, shall have a residence in the county in which he or she has longest resided within such year.

3. Every minor not emancipated and settled in his own right shall have the same residence as the parent with whom he has last resided.

For the purposes of this section the time spent while receiving institutional care in any state licensed ~~home for the aged, infirm, basic care facility or home for the neglected,~~ or indigent shall not be included in the computation of time necessary to establish residence hereunder.

SECTION 4. AMENDMENT. Subsection 8 of section 50-06-01.4 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

8. Administration of medical service programs, including medical assistance for needy persons, early and periodic screening, diagnosis and treatment, the licensure of ~~boarding homes for the aged and infirm basic care facilities,~~ utilization control, and claims processing.

SECTION 5. AMENDMENT. Section 50-06-14.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-14.1. Limitation on state reimbursement for rental expenses of long-term care facilities. The department of human services shall limit the reimbursement for rental expense paid by a provider of services when a provider sells its skilled nursing facility, intermediate care facility, ~~boarding home for the aged and infirm basic care facility,~~ or other facility furnishing care to its residents, where a care rate is based, in part, upon property costs unique to that facility, to a third party who leases the facility ~~or home~~ back to the provider. The department's reimbursement for rental expense may not exceed the lesser of the rental expense paid by the provider or the cost of ownership of the facility ~~or home~~. The cost of ownership includes depreciation, interest, real estate taxes, and other expenses properly related to the facility ~~or home~~. The department of human services shall apply this limit to rates set for each facility's first fiscal year beginning on or after July 1, 1985, but shall consider, in setting such rates, all sales occurring on or after July 18, 1984.

SECTION 6. A new section to chapter 50-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Department to establish reasonable rates. The department may establish reasonable rates payable to basic care facilities for the care and maintenance of individuals dependent in whole or in part upon state or county supplementation of supplemental security income benefits under title XVI of the Social Security Act, as amended, for a reasonable subsistence compatible with decency and health.

SECTION 7. AMENDMENT. Subsection 3 of section 50-10.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Long-term care facility" means any skilled nursing facility, intermediate care facility, ~~boarding home for the aged and infirm basic care facility,~~ nursing home as defined in subsection 3 of section 43-34-01, boardinghouse, or swing bed hospital approved to furnish long-term care services; provided, that a facility, as

defined by subsection 2 of section 25-01.2-01, providing services to developmentally disabled persons is not a long-term care facility.

SECTION 8. AMENDMENT. Subsection 3 of section 50-10.2-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Facility" means a skilled nursing care facility, intermediate care facility, boarding home for the aged and infirm basic care facility, boardinghouse, or swing bed hospital approved to furnish long-term care services.

SECTION 9. AMENDMENT. Section 50-21-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-21-01. Revolving loan fund - Appropriation. The revolving loan fund shall be maintained for the purpose of making loans to nonprofit corporations for the construction or reconstruction of nursing homes, homes for the aged and infirm basic care facilities, or combination nursing homes and homes for the aged and infirm basic care facilities. All funds transferred into the fund, interest upon moneys in the fund, and collections of interest and principal on loans made from the fund are hereby appropriated for the purpose of providing loans in accordance with the provisions of this chapter.

SECTION 10. AMENDMENT. Section 50-21-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-21-02. Administration of revolving fund. The revolving fund and loans made therefrom shall be supervised and administered by the Bank of North Dakota. All applications for loans under the provisions of this chapter for the construction of nursing homes or combination nursing homes and homes for the aged and infirm basic care facilities shall be made to the state department of health and consolidated laboratories, which department shall be authorized, subject to the approval of the North Dakota health council, to promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter. All applications for the construction of homes for the aged and infirm basic care facilities shall be made to the department of human services health and consolidated laboratories, which department shall promulgate such rules and regulations as may be necessary to carry out the provisions of this chapter. Applications approved by the state department of health and consolidated laboratories and the North Dakota health council or the department of human services, as the case may be, shall be forwarded to the Bank of North Dakota. Upon approval of such application by the president of the Bank of North Dakota, loans shall be granted by the Bank of North Dakota from the revolving fund in accordance with the provisions of this chapter.

SECTION 11. AMENDMENT. Section 50-21-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-21-03. Amount of loan - Terms and conditions. Loans in an amount not exceeding one-half of the cost of construction or reconstruction including the cost or value of real estate upon which the facility is located and in no event exceeding one hundred fifty thousand dollars to any one applicant shall be made by the Bank of North Dakota to nonprofit corporations

to be used in the construction or reconstruction in this state of nursing homes, ~~homes for the aged and infirm~~ basic care facilities, or combination nursing homes and ~~homes for the aged and infirm~~ basic care facilities. Such loans shall bear interest at the rate of seven percent per annum and shall be repayable in the manner prescribed by the president of the Bank of North Dakota within a period of not more than twenty-five years. In addition, in consideration of the granting of the loans, each nonprofit corporation shall execute a contract with the state to operate such ~~home~~ basic care facility for a period of not less than twenty years, and to operate and maintain the ~~home~~ basic care facility in accordance with the standards prescribed for the licensing of such ~~home~~ basic care facility by the state department of health ~~or department of human services; as the case may be~~ and consolidated laboratories. Such contract shall also require the nonprofit corporation to maintain facilities for not less than five persons referred to such ~~home~~ basic care facility by any county social service board. Such contract shall also provide that if the use of such ~~home~~ basic care facility is discontinued or if it shall be diverted to other purposes, the full amount of the loan provided under this chapter shall immediately become due and payable. Loans shall be made only to an applicant who is not receiving other loans or grants of funds from this state for such construction or reconstruction. Payments of interest and principal upon such loans shall be made to the Bank of North Dakota and credited to the revolving fund.

SECTION 12. AMENDMENT. Section 50-21-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-21-04. Standards - Administration procedure. The state department of health and consolidated laboratories, subject to the approval of the state health council, shall establish standards of construction which shall be followed by all applicants receiving loans of funds for the construction of nursing homes or combination nursing homes and ~~homes for the aged and infirm~~ basic care facilities. The department of ~~human services~~ health and consolidated laboratories shall establish standards of construction which shall be followed by all applicants for loans for the construction of ~~homes for the aged and infirm~~ basic care facilities. The health council, in the case of the construction of ~~nursing homes or basic care facilities~~ nursing homes or basic care facilities or combination nursing homes and ~~homes for the aged and infirm; and the department of human services; in the case of the construction of homes for the infirm and aged basic care facilities~~, shall approve all building plans and specifications for any facilities to be constructed in whole or in part with loans of funds provided under the provisions of this chapter prior to the disbursement of any such funds. Administrative procedures established by the state department of health and consolidated laboratories with the approval of the health council ~~and by the department of human services~~, shall, except to construction standards, be in general in accordance with the procedures established for the administration of the federal grant-in-aid program for similar purposes under the Hill-Burton Act, or federal acts supplemental thereto.

SECTION 13. AMENDMENT. Subsections 17 and 24 of section 57-39.2-04 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

17. Gross receipts from the sale of all services furnished by any hospital, infirmary, sanatorium, nursing home, ~~home for the aged~~ basic care facility or similar institution to any patient or occupant.

24. Gross receipts from all sales when made to an eligible facility for the use or benefit of its patient or occupant. For the purposes of this subsection, "eligible facility" means any hospital, skilled nursing facility, ~~or intermediate care facility, or basic care facility~~ licensed by the state department of health and consolidated laboratories, ~~and boarding homes for the aged and infirm licensed by the department of human services.~~

SECTION 14. REPEAL. Sections 50-18-01, 50-18-01.1, 50-18-02, 50-18-02.1, 50-18-03, 50-18-03.1, 50-18-04, 50-18-05, 50-18-06, 50-18-06.1, 50-18-06.2, 50-18-07, and 50-18-08 of the North Dakota Century Code and section 50-18-01.2 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 3, 1989
Filed April 3, 1989

CHAPTER 318

SENATE BILL NO. 2302
(Senator Ingstad)
(Representative J. DeMers)

FEDERAL HEALTH CARE QUALITY IMPROVEMENT ACT

AN ACT to provide that the provisions of the federal Health Care Quality Improvement Act of 1986 are effective in this state; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Federal Health Care Quality Improvement Act of 1986 applicable in North Dakota. Pursuant to the Health Care Quality Improvement Act of 1986 [Pub. L. 99-660, Title IV; 100 Stat. 3784; 42 U.S.C. 11101 et seq.], providing for a limitation on damages for professional review actions, the provisions of that Act are effective in this state.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 319

SENATE BILL NO. 2335
(Senators Waldera, Shea, Holmberg)
(Representatives J. DeMers, Graba, Rydell)

MOBILITY IMPAIRED PARKING

AN ACT to amend and reenact subsection 2 of section 23-13-02.3, sections 39-01-15 and 39-04-10.2, subsection 7 of section 39-06.1-06, and section 39-07-07.1 of the North Dakota Century Code, relating to vehicle refueling services, parking privileges, and traffic regulations concerning mobility impaired persons; to repeal subsection 3 of section 39-01-15 of the North Dakota Century Code, relating to the committee appointed to develop guidelines for qualification and the issuance of certificates or insignia for parking privileges for the mobility impaired; to provide a penalty; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 2 of section 23-13-02.3 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. At all times during the operation of a self-service motor fuel dispensing facility the owner, operator, employee, or authorized attendant shall be on the premises and shall supervise the operation thereof. The person attending the operation shall refuse service to anyone who appears for any reason to be unable to dispense such motor fuel safely. If, however, the filling station provides pump island service to its customers, the attendant must provide refueling services to any handicapped mobility impaired person stopped at a self-service motor fuel dispensing unit who requests assistance and whose vehicle displays a certificate ~~or insignia~~ issued pursuant to under section 39-01-15. No additional cost may be charged to a handicapped mobility impaired person because of the service. This subsection ~~shall~~ does not apply to any self-service motor fuel dispensing unit equipped with a card-operated or key-operated dispensing device, provided that all persons possessing the card or keys required to operate the device have been instructed in the proper and safe operation of the device.

** SECTION 2. AMENDMENT. Section 39-01-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-01-15. Parking privileges for mobility impaired - Certificate - Revocation - Continuing appropriation - Penalty.

1. Any mobility impaired person who displays prominently upon an automobile parked by that person or under that person's direction

* NOTE: Subsection 2 of section 23-13-02.3 was also amended by section 17 of Senate Bill No. 2056, chapter 69.

** NOTE: Section 39-01-15 was also affected by sections 2 and 6 of Senate Bill No. 2335, chapter 319, and section 1 of Senate Bill No. 2143, chapter 443.

and for that person's use, the distinguishing certificate ~~or insignia~~ specified in subsection 4 is entitled to courtesy in the parking of the automobile. Provided, however, that any municipality may, by ordinance, prohibit parking on any street or highway for the purpose of creating a fire lane, or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extended to such impaired persons do not apply on streets or highways where and during such times as parking is prohibited.

2. Mobility A mobility impaired person as used in this section includes any person who has sustained an amputation or material disability of either or both legs, or who has been otherwise impaired in any manner rendering it difficult and burdensome for that person to walk lost the use of one or both legs; requires personal assistance or the use of crutches, a wheelchair, or a walker to walk two hundred feet [60.96 meters] without rest; is restricted by cardiac, pulmonary, or vascular disease from walking two hundred feet [60.96 meters] without rest; has a forced expiratory volume of less than one liter for one second or an arterial oxygen tension of less than sixty millimeters of mercury on room air while at rest and is classified III or IV by standards for cardiac disease set by the American heart association; or has an orthopedic, neurologic, or other medical condition that makes it impossible for the person to walk two hundred feet [60.96 meters] without assistance or rest.
3. The registrar shall appoint a three-member committee. The committee must include two mobility impaired persons and one qualified physician. The terms of membership on the committee are three years, staggered so that one member is appointed each year. The initial membership of the committee must be appointed to terms of up to three years to provide for the initial staggering of terms under this subsection. The committee shall ~~develop~~ review guidelines for qualification for and issuance of a special identifying certificate or insignia for use in this state.
4. The registrar of motor vehicles ~~shall~~ may issue, for a fee of ~~two~~ three dollars per year or part of a year, a special identifying certificate ~~or insignia for a marked motor vehicle~~ to any mobility impaired applicant upon submission by the applicant of a completed application and a ~~certificate~~ written statement issued by a qualified physician to the registrar that the applicant is a mobility impaired person within the ~~meaning~~ criteria of subsection 2. The application must include the information required by the ~~committee~~ registrar. The ~~physician~~ physician's statement must describe how the impairment limits the applicant's mobility and daily life functions of the applicant. The certificate ~~or insignia~~ is valid for a period, not to exceed three years, as determined by the registrar. ~~The registrar shall determine the form and size of the certificate or insignia and~~ A physician who provides a false statement that a person is mobility impaired for the purpose of that person obtaining a certificate under this subsection is guilty of an infraction for which a minimum fine of one hundred dollars must be imposed. A certificate issued under this subsection must be at least five and one-half inches [13.97 centimeters] in height and eight and one-half inches

[21.59 centimeters] in width and must bear, in blue on white, the internationally accepted symbol of access for the mobility impaired. The certificate must bear the expiration date and registration number assigned by the registrar. The registrar shall adopt rules governing the issuance of the certificate ~~or insignia~~. ~~Of~~. A temporary certificate, valid for an initial period not to exceed three months, may be issued by the registrar for a fee of three dollars upon application supported by a physician's statement. The temporary certificate may be extended an additional period, not to exceed three months, upon application supported by a physician's statement that the extension is warranted. The registrar shall determine the form and size of the temporary certificate.

5. Two dollars of each fee for issuance of a certificate ~~or insignia~~ under this section, ~~one dollar~~ must be deposited in the state highway department fund for purposes of defraying the cost of issuing the certificate ~~or insignia~~. The rest of the fee must be deposited in the ~~general~~ state treasury and credited to the employment of people with disabilities fund ~~for use, subject to legislative appropriation, by~~. The fees deposited in the fund are hereby appropriated on a continuing basis to the committee on employment of the handicapped people with disabilities of the governor's council on human resources for development of job opportunities for disabled individuals in this state. If a certificate is lost, mutilated, or destroyed, the person to whom the certificate was issued is entitled to a replacement ~~certificate~~. The person shall furnish proof satisfactory to the registrar that the certificate has been lost, mutilated, or destroyed, and shall pay a replacement fee of three dollars.
6. A certificate issued under this section must be prominently displayed on the left-hand dashboard of the motor vehicle whenever the vehicle is occupying a space reserved for the mobility impaired and is being used by a mobility impaired person or another person for the purposes of transporting the mobility impaired person. No part of the certificate may be obscured. A fee of five dollars may be imposed for a violation of this subsection.
- 5- 7. An applicant may appeal a decision denying issuance of the certificate ~~or insignia~~ to the registrar of motor vehicles. Written notice of the appeal must be received within ten business days following receipt by the applicant of notice of denial. The applicant has sixty days to provide additional supportive material to the registrar for purposes of deciding the appeal. The registrar shall affirm or reverse the decision to deny issuance of the certificate ~~or insignia~~ within thirty days after receipt of the supportive material. Written notice of the decision must be given to the applicant.
- 6- 8. If the police of any municipality or any other political subdivision ~~shall find a law enforcement officer finds that such~~ the certificate ~~or insignia~~ is being improperly used, ~~they the~~ officer may report to the registrar of motor vehicles any such violation and the registrar may, in ~~his~~ the registrar's discretion, remove the privilege. Any person who is not mobility impaired and who exercises the privileges granted a mobility impaired person

under subsection 1 ~~shall be~~ is guilty of an infraction for which a fine of one hundred dollars must be imposed.

~~7-~~ 9. Whenever any public or private agency or authority designates parking spaces for use by motor vehicles operated by mobility impaired persons, those reserved spaces shall be indicated by blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space. In addition to blue paint, the ~~space~~ spaces reserved ~~shall~~ must also be indicated by ~~signs or other suitable means~~ official signs approved by the commissioner bearing the internationally accepted symbol of access for the mobility impaired which indicate, through the use of arrows, the total width of the reserved area. The sign must indicate that unauthorized use of the space is an infraction for which a fine of one hundred dollars must be imposed. For particular events, a public or a private agency may reserve additional parking spaces for use by motor vehicles operated by mobility impaired persons. In that case, the temporarily reserved spaces must be indicated by signs or other suitable means. ~~The~~ A sign indicating that a space is reserved for the mobility impaired and blue paint on the curb or edge of the paved portion of the street or parking lot adjacent to the space, unless the space is a temporary mobility impaired parking space is sufficient basis for the enforcement of this section. A law enforcement agency of any city or any other political subdivision officer may enforce the provisions of this subsection section in any parking lot or parking facility that is generally open to the public, whether publicly or privately owned.

~~8-~~ 10. ~~No~~ A person may not stop, stand, or park any vehicle in any designated parking space ~~which that~~ is reserved for the mobility impaired ~~on any state charitable or penal institution property or on the state capitol grounds~~ unless the vehicle displays a mobility impaired identification certificate or insignia issued by the registrar of motor vehicles to a mobility impaired person. A mobility impaired person may not permit the use of a certificate issued under this section by a person who is not mobility impaired when that use is not in connection with the transport of the mobility impaired person. A vehicle may temporarily use a space reserved for mobility impaired persons without a mobility impaired certificate for the purpose of loading and unloading mobility impaired persons. A violation of this subsection is an infraction for which a fine of one hundred dollars must be imposed.

11. Any motor vehicle licensed in another state which displays a special authorized vehicle designation issued by the licensing authority of that state for vehicles used in the transportation of mobility impaired persons must be accorded the same privilege provided in this section for similar vehicles licensed in this state if the laws of the other state provide the same privileges to North Dakota motor vehicles displaying the special identifying certificate authorized in this section.

* SECTION 3. AMENDMENT. Section 39-04-10.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-10.2. Special plates for **physically handicapped** mobility impaired persons. The registrar of motor vehicles ~~shall may~~ issue, without

* NOTE: Section 39-04-10.2 was also amended by section 43 of Senate Bill No. 2056, chapter 69.

charge, upon application and payment of the regular license fee, plates marked with a ~~special identifying insignia~~, the internationally accepted symbol, ~~or design making them distinctly different from other number plates of access for the mobility impaired, to any physically handicapped mobility impaired applicant upon submission by the applicant of a certificate written statement issued by a qualified physician to the registrar that the applicant is a physically handicapped mobility impaired person within the meaning of subsection 2 of section 39-01-15.~~ The registrar shall determine the form and size of the ~~insignia, symbol, or design,~~ and shall ~~promulgate adopt rules and regulations governing the issuance thereof of the plate.~~

* SECTION 4. AMENDMENT. Subsection 7 of section 39-06.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. For a violation of ~~subsection 6 of section 39-01-15, any municipal ordinance equivalent to subsection 6 of section 39-01-15, or any traffic parking regulations, except a violation of subsection 9 of section 39-01-15,~~ on any state charitable or penal institution property or on the state capitol grounds, a fee in the amount of five dollars.

** SECTION 5. AMENDMENT. Section 39-07-07.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-07-07.1. Provision of envelopes for traffic and parking violations on state charitable or penal institution property or state capitol grounds. Preprinted envelopes must be provided for any person who elects to post bond by mail, pursuant to section 39-06.1-02, for a violation of ~~subsection 6 of section 39-01-15 or~~ any state traffic parking regulations on any state charitable or penal institution property or on the state capitol grounds.

*** SECTION 6. REPEAL. Subsection 3 of section 39-01-15 of the North Dakota Century Code is hereby repealed.

SECTION 7. EFFECTIVE DATE. Section 6 of this Act becomes effective on July 1, 1992.

Approved April 28, 1989
Filed April 28, 1989

- * NOTE: Subsection 7 of section 39-06.1-06 was also amended by section 44 of Senate Bill No. 2056, chapter 69.
- ** NOTE: Section 39-07-07.1 was also amended by section 45 of Senate Bill No. 2056, chapter 69.
- *** NOTE: Section 39-01-15 was also affected by sections 2 and 6 of Senate Bill No. 2335, chapter 319, and section 1 of Senate Bill No. 2143, chapter 443.

CHAPTER 320

HOUSE BILL NO. 1190
(Committee on Human Services and Veterans Affairs)
(At the request of the State Department of
Health and Consolidated Laboratories)

HEALTH CARE FACILITY RECEIVERS

AN ACT to create and enact chapter 23-16.1 of the North Dakota Century Code, relating to appointment of receivers for licensed health care facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 23-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

23-16.1-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the state department of health and consolidated laboratories.
2. "Health care facility" means those facilities licensed under chapter 23-16.

23-16.1-02. Conditions for appointment of receiver. If the department has revoked the license of a health care facility, or if the operator of a health care facility has requested, the department may file a petition with the district court to place the health care facility under the control of a receiver if necessary to protect the health or safety of patients or residents at the health care facility. The court may grant the petition upon a finding that the health or safety of the patients or residents at the health care facility would be seriously threatened if a condition existing at the time the petition was filed is permitted to continue. This finding may be based upon evidence concerning the physical plant or the program and services offered by the health care facility, but not solely upon evidence that a health care facility has been denied a license to operate as a health care facility or has had a previously issued license revoked.

23-16.1-03. Appointment of receiver. The court shall appoint as receiver the state health officer who shall designate a qualified individual, not employed by this state or its political subdivisions, or a nonprofit organization to execute the receivership. The receiver appointed by the court shall use the income and assets of the health care facility to maintain and operate the health care facility and to attempt to correct the conditions that constitute a threat to the patients or residents. The receiver may not liquidate the assets of the health care facility.

23-16.1-04. Termination of receivership. The receivership must be terminated when the receiver and the court certify that the conditions which

prompted the appointment have been corrected, when the license is restored, when a new license is issued, or, in the case of an election by the owner or owners to discontinue operation, when the patients or residents are safely placed or provided services in the health care facility.

23-16.1-05. Accounting. Upon the termination of the receivership, the receiver shall render a complete accounting to the court and shall dispose of surplus funds as the court directs.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 321

SENATE BILL NO. 2075
(Senators Moore, Todd)
(Representative A. Olson)

RADIOACTIVE WASTE COMPACT REPEAL

AN ACT to repeal chapter 23-20.4 of the North Dakota Century Code and chapter 297 of the 1985 Session Laws, relating to the Rocky Mountain and Dakota interstate low-level radioactive waste management compacts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 23-20.4 of the 1987 Supplement to the North Dakota Century Code and chapter 297 of the 1985 Session Laws are hereby repealed.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 322

SENATE BILL NO. 2076
(Senators Moore, Todd)
(Representatives Mertens, A. Olson)

RADIOACTIVE WASTE DISPOSAL COMPACT

AN ACT to enter into the southwestern low-level radioactive waste disposal compact.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Southwestern low-level radioactive waste disposal compact. The southwestern low-level radioactive waste disposal compact is hereby entered into with all jurisdictions legally joining the compact, in the form substantially as follows:

ARTICLE I. COMPACT POLICY AND FORMATION

The party states hereby find and declare all of the following:

1. The United States Congress, by enacting the Low-Level Radioactive Waste Policy Act, Public Law 96-573, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021b - 2021j), has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste.
2. It is the purpose of this compact to provide the means for such a cooperative effort between or among party states to protect the citizens of the states and the states' environments.
3. It is the policy of party states to this compact to encourage the reduction of the volume of low-level radioactive waste requiring disposal within the compact region.
4. It is the policy of the party states that the protection of the health and safety of their citizens and the most ecological and economical management of low-level radioactive wastes can be accomplished through cooperation of the states by minimizing the amount of handling and transportation required to dispose of these wastes and by providing facilities that serve the compact region.
5. Each party state, if an agreement state pursuant to section 2021 of title 42 of the United States Code, or the nuclear regulatory commission if not an agreement state, is responsible for the primary regulation of radioactive materials within its jurisdiction.

ARTICLE II. DEFINITIONS

As used in this compact, unless the context clearly indicates otherwise, the following definitions apply:

1. "Commission" means the southwestern low-level radioactive waste commission established in article III of this compact.
2. "Compact region" or "region" means the combined geographical area within the boundaries of the party states.
3. "Disposal" means the permanent isolation of low-level radioactive waste pursuant to requirements established by the nuclear regulatory commission and the environmental protection agency under applicable laws, or by a party state if the state hosts a disposal facility.
4. "Generate", when used in relation to low-level radioactive waste, means to produce low-level radioactive waste.
5. "Generator" means a person whose activity, excluding the management of low-level radioactive waste, results in the production of low-level radioactive waste.
6. "Host county" means a county, or other similar political subdivision of a party state, in which a regional disposal facility is located or being developed.
7. "Host state" means a party state in which a regional disposal facility is located or being developed. California is the host state under this compact for the first thirty years from the date the California regional disposal facility commences operations.
8. "Institutional control period" means that period of time in which the facility license is transferred to the disposal site owner in compliance with the appropriate regulations for long-term observation and maintenance following the postclosure period.
9. "Low-level radioactive waste" means regulated radioactive material that meets all of the following requirements:
 - a. The waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material (as defined in section 11e(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2))).
 - b. The waste is not uranium mining or mill tailings.
 - c. The waste is not any waste for which the federal government is responsible pursuant to subdivision (b) of section 3 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021c(b)).
 - d. The waste is not an alpha-emitting transuranic nuclide with a half-life greater than five years and with a concentration greater than one hundred nanocuries per gram, or plutonium-241 with a concentration greater than three thousand five hundred nanocuries per gram, or curium-242 with a concentration greater than twenty thousand nanocuries per gram.
10. "Major generator state" means a party state that generates ten percent of the total amount of low-level radioactive waste produced within the compact region and disposed of at the regional disposal

facility. If no party state other than California generates at least ten percent of the total amount, "major generator state" means the party state that is second to California in the amount of waste produced within the compact region and disposed of at the regional disposal facility.

11. "Management" means collection, consolidation, storage, packaging, or treatment.
12. "Operator" means a person who operates a regional disposal facility.
13. "Party state" means any state that has become a party in accordance with article VII of this compact.
14. "Person" means an individual, corporation, partnership, or other legal entity, whether public or private.
15. "Postclosure period" means that period of time after completion of closure of a disposal facility during which the licensee observes, monitors, and carries out necessary maintenance and repairs at the disposal facility to assure that the disposal facility will remain stable and will not need ongoing active maintenance. This period ends with the beginning of the institutional control period.
16. "Regional disposal facility" means a nonfederal low-level radioactive waste disposal facility established and operated under this compact.
17. "Site closure and stabilization" means the activities of the disposal facility operator taken at the end of the disposal facility's operating life to assure the continued protection of the public from any residual radioactive or other potential hazards present at the disposal facility.
18. "Transporter" means a person who transports low-level radioactive waste.
19. "Uranium mine and mill tailings" means waste resulting from mining and processing of ores containing uranium.

ARTICLE III. THE COMMISSION

1. There is hereby established the southwestern low-level radioactive waste commission.
 - a. The commission consists of one voting member from each party state to be appointed by the governor, confirmed by the senate of that party state, and to serve at the pleasure of the governor of each party state, and one voting member from the host county. The appointing authority of each party state shall notify the commission in writing of the identity of the member and of any alternates. An alternate may act in the member's absence.
 - b. The host state shall also appoint that number of additional voting members of the commission which is necessary for the host state's members to compose at least fifty-one percent of

the membership on the commission. The host state's additional members must be appointed by the host state governor and confirmed by the host state senate.

If there is more than one host state, only the state in which is located the regional disposal facility actively accepting low-level radioactive waste pursuant to this compact may appoint these additional members.

- c. If the host county has not been selected at the time the commission is appointed, the governor of the host state shall appoint an interim local government member, who must be an elected representative of a local government. After a host county is selected, the interim local government member shall resign and the governor shall appoint the host county member pursuant to subdivision d.
 - d. The governor shall appoint the host county member from a list of at least seven candidates compiled by the board of county commissioners of the host county.
 - e. In recommending and appointing the host county member pursuant to subdivision d, the board of county commissioners and the governor shall give first consideration to recommending and appointing the members of the board of county commissioners in whose district the regional disposal facility is located or being developed. If the board of county commissioners of the host county does not provide a list to the governor of at least seven candidates from which to choose, the governor shall appoint a resident of the host county as the host county member.
 - f. The host county member is subject to confirmation by the senate of the host state and serves at the pleasure of the governor of the host state.
2. The commission is a legal entity separate and distinct from the party states and is liable for its actions. Members of the commission are not personally liable for actions taken in their official capacity. The liabilities of the commission are not to be deemed liabilities of the party states.
3. The commission must conduct its business affairs pursuant to the laws of the host state and disputes arising out of commission action must be governed by the laws of the host state. The commission must be located in the capital city of the host state in which the regional disposal facility is located.
4. The commission's records are subject to the host state's public records law, and the meetings of the commission must be open and public in accordance with the host state's open meeting law.
5. The commission members are public officials of the appointing state and are subject to the conflict of interest laws, as well as any other law, of the appointing state. The commission members must be compensated according to the appointing state's law.

6. Each commission member is entitled to one vote. A majority of the commission constitutes a quorum. Unless otherwise provided in this capacity, a majority of the total number of votes on the commission is necessary for the commission to take any action.
7. The commission has all of the following duties and authority:
 - a. The commission shall do, pursuant to the authority granted by this compact, whatever is reasonably necessary to ensure that low-level radioactive wastes are safely disposed of and managed within the region.
 - b. The commission shall meet at least once a year and otherwise as business requires.
 - c. The commission shall establish a compact surcharge to be imposed upon party state generators. The surcharge must be based upon the cubic feet of low-level radioactive waste and the radioactivity of the low-level radioactive waste and must be collected by the operator of the disposal facility.

The host state shall set, and the commission shall impose, the surcharge after congressional approval of the compact. The amount of the surcharge must be sufficient to establish and maintain a reasonable level of funds for all of the following purposes:

- (1) The activities of the commission and commission staff.
 - (2) At the discretion of the host state, a third-party liability fund to provide compensation for injury to persons or property during the operational, closure, stabilization, and postclosure and institutional control periods of the regional disposal facility. This paragraph does not limit the responsibility or liability of the operator, who shall comply with any federal or host state statutes or regulations regarding third-party liability claims.
 - (3) A local government reimbursement fund, for the purpose of reimbursing the local government entity or entities hosting the regional disposal facility for any costs or increased burdens on the local governmental entity for services, including, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, law enforcement, monitoring by local health officials, and emergency preparation and response related to the hosting of the regional disposal facility.
- d. The surcharges imposed by the commission for purposes of paragraphs 2 and 3 of subdivision c and surcharges pursuant to subdivision c of subsection 5 of article IV must be transmitted on a monthly basis to the host state for distribution to the proper accounts.
 - e. The commission shall establish a fiscal year that conforms to the fiscal years of the party states to the extent possible.

- f. The commission shall keep an accurate account of all receipts and disbursements. An annual audit of the books of the commission must be conducted by an independent certified public accountant, and the audit report must be made a part of the annual report of the commission.
- g. The commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the subsequent fiscal year.
- h. The commission may accept any grants, equipment, supplies, materials, or services, conditional or otherwise, from the federal government or a state government. The nature, amount and condition, if any, of any donation, grant, or other resources accepted pursuant to this subdivision and the identity of the donor or grantor must be detailed in the annual report of the commission.

However, the host state is entitled to receive, for the uses specified in subparagraph E of paragraph 2 of subsection d of section 2021e of title 42 of the United States Code, any payments paid from the special escrow account for which the secretary of energy is trustee pursuant to subparagraph A of paragraph 2 of subsection d of section 2021e of title 42 of the United States Code.

- i. The commission shall submit communications to the governors and to the presiding officers of the legislative assemblies of the party states regarding the activities of the commission, including an annual report to be submitted on or before January fifteenth of each year. The commission shall include in the annual report a review of, and recommendations for, low-level radioactive waste disposal methods that are alternative technologies to the shallow land burial of low-level radioactive waste.
- j. The commission shall assemble and make available to the party states, and to the public, information concerning low-level radioactive waste management needs, technologies, and problems.
- k. The commission shall keep a current inventory of all generators within the region, based upon information provided by the party states.
- l. The commission shall keep a current inventory of all regional disposal facilities, including information on the size, capacity, location, specific low-level radioactive wastes capable of being managed, and the projected useful life of each regional disposal facility.
- m. The commission may establish advisory committees for the purpose of advising the commission on the disposal and management of low-level radioactive waste.
- n. The commission may enter into contracts to carry out its duties and authority, subject to projected resources. No contract made by the commission may bind a party state.

- o. The commission shall prepare contingency plans, with the cooperation and approval of the host state, for the disposal and management of low-level radioactive waste in the event that any regional disposal facility should be closed.
- p. The commission may sue and be sued and, when authorized by a majority vote of the members, may seek to intervene in an administrative or judicial proceeding related to this compact.
- q. The commission must be managed by an appropriate staff, including an executive director. Notwithstanding any other provision of law, the commission may hire or retain, or both, legal counsel.
- r. The commission may, subject to applicable federal and state laws, recommend to the appropriate host state authority suitable land and rail transportation routes for low-level radioactive waste carriers.
- s. The commission may enter into an agreement to import low-level radioactive waste into the region only if both of the following requirements are met:
 - (1) The commission approves the importation agreement by a two-thirds vote of the commission.
 - (2) The commission and the host state assess the affected regional disposal facilities' capability to handle imported low-level radioactive wastes and any relevant environmental or economic factors, as defined by the host state's appropriate regulatory authorities.
- t. The commission may, upon petition, allow an individual generator, a group of generators, or the host state of the compact, to export low-level radioactive wastes to a low-level radioactive waste disposal facility located outside the region. The commission may approve the petition only by a two-thirds vote of the commission. The permission to export low-level radioactive wastes is effective for that period of time and for the amount of low-level radioactive waste, and subject to any other term or condition, which may be determined by the commission.
- u. The commission may approve, only by a two-thirds vote of the commission, the exportation outside the region of material, which otherwise meets the criteria of low-level radioactive waste, if the sole purpose of the exportation is to process the material for recycling.
- v. The commission shall, not later than ten years before the closure of the initial or subsequent regional disposal facility, prepare a plan for the establishment of the next regional disposal facility.

ARTICLE IV. RIGHTS, RESPONSIBILITIES, AND OBLIGATIONS OF PARTY STATES

1. There must be regional disposal facilities sufficient to dispose of the low-level radioactive waste generated within the region.
2. Low-level radioactive waste generated within the region must be disposed of at regional disposal facilities and each party state must have access to any regional disposal facility without discrimination.
3. a. Upon the effective date of this compact, California must serve as the host state and must comply with the requirements of subsection 5 for at least thirty years from the date the regional disposal facility begins to accept low-level radioactive waste for disposal. The extension of the obligation and duration is at the option of California.

If California does not extend this obligation, the party state, other than California, which is the largest major generator state must then serve as the host state for the second regional disposal facility.

The obligation of a host state which hosts the second regional disposal facility must also run for thirty years from the date the second regional disposal facility begins operations.

- b. The host state may close its regional disposal facility when necessary for public health or safety.
4. The party states of this compact cannot be members of another regional low-level radioactive waste compact entered into pursuant to the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (42 U.S.C. 2021b - 2021j).
5. A host state shall do all of the following:
 - a. Cause a regional disposal facility to be developed on a timely basis.
 - b. Ensure by law, consistent with any applicable federal laws, the protection and preservation of public health and safety in the siting, design, development, licensing, regulation, operation, closure, decommissioning, and long-term care of the regional disposal facilities within the state.
 - c. Ensure that charges for disposal of low-level radioactive waste at the regional disposal facility are reasonably sufficient to do all of the following:
 - (1) Ensure the safe disposal of low-level radioactive waste and long-term care of the regional disposal facility.
 - (2) Pay for the cost of inspection, enforcement, and surveillance activities at the regional disposal facility.
 - (3) Assure that charges are assessed without discrimination as to the party state of origin.

- d. Submit an annual report to the commission on the status of the regional disposal facility including projections of the facility's anticipated future capacity.
 - e. The host state and the operator shall notify the commission immediately upon the occurrence of any event which could cause a possible temporary or permanent closure of a regional disposal facility.
6. Each party state is subject to the following duties and authority:
- a. To the extent authorized by federal law, each party state shall develop and enforce procedures requiring low-level radioactive waste shipments originating within its borders and destined for a regional disposal facility to conform to packaging and transportation requirements and regulations. These procedures must include all of the following requirements:
 - (1) Periodic inspections of packaging and shipping practices.
 - (2) Periodic inspections of low-level radioactive waste containers while in the custody of transporters.
 - (3) Appropriate enforcement actions with respects to violations.
 - b. A party state may impose a surcharge on the low-level radioactive waste generators within the state to pay for activities required by subdivision a.
 - c. To the extent authorized by federal law, each party state shall, after receiving notification from a host state that a person in a party state has violated packaging, shipping, or transportation requirements or regulations, take appropriate actions to ensure that these violations do not continue. Appropriate actions include requiring that a bond be posted by the violator to pay the cost of repackaging at the regional disposal facility and prohibiting future shipments to the regional disposal facility.
 - d. Each party state shall maintain a registry of all generators within the state that may have low-level radioactive waste to be disposed of at a regional disposal facility, including the amount of low-level radioactive waste and the class of low-level radioactive waste generated by each generator.
 - e. Each party state shall encourage generators within its borders to minimize the volume of low-level radioactive waste requiring disposal.
 - f. Each party state may rely on the good faith performance of the other party states to perform those acts that are required by this compact to provide regional disposal facilities, including the use of the regional disposal facilities in a manner consistent with this compact.

- g. Each party state shall provide the commission with any data and information necessary for the implementation of the commission's responsibilities, including taking those actions necessary to obtain this data or information.
- h. Each party state shall agree that only low-level radioactive waste generated within the jurisdiction of the party states may be disposed of in the regional disposal facility, except as provided in subdivision s of subsection 7 of article III.
- i. Each party state shall agree that if there is any injury to persons or property resulting from the operation of a regional disposal facility, the damages resulting from the injury may be paid from the third-party liability fund pursuant to paragraph 2 of subdivision c of subsection 7 of article III, only to the extent that the damages exceed the limits of liability insurance carried by the operator. No party state, by joining this compact, assumes any liability resulting from the siting, operation, maintenance, long-term care, or other activity relating to a regional facility, and no party state is liable for any harm or damage resulting from a regional facility not located within the state.

ARTICLE V. APPROVAL OF REGIONAL FACILITIES

A regional disposal facility must be approved by the host state in accordance with its laws. This compact does not confer any authority on the commission regarding the siting, design, development, licensing, or other regulation, or the operation, closure, decommissioning, or long-term care of, any regional disposal facility within a party state.

ARTICLE VI. PROHIBITED ACTS AND PENALTIES

- 1. No person shall dispose of low-level radioactive waste within the region unless the disposal is at a regional disposal facility, except as otherwise provided in subdivisions t and u of subsection 7 of article III.
- 2. No person shall dispose of or manage any low-level radioactive waste within the region unless the low-level radioactive waste was generated within the region, except as provided in subdivisions s, t, and u of subsection 7 of article III.
- 3. Violations of this section must be reported to the appropriate law enforcement agency within the party state's jurisdiction.
- 4. Violations of this section may result in prohibiting the violator from disposing of low-level radioactive waste in the regional disposal facility, as determined by the commission or the host state.

ARTICLE VII. ELIGIBILITY, ENTRY INTO EFFECT, CONGRESSIONAL CONSENT, WITHDRAWAL, EXCLUSION

- 1. Arizona, North Dakota, South Dakota, and California are eligible to become parties to this compact. Any other state may be made eligible by a majority vote of the commission and ratification by the legislative assemblies of all of the party states by statute, and upon compliance with those terms and conditions for eligibility which the host state may establish. The host state may establish

all terms and conditions for the entry of any state, other than the states named in this subsection, as a member of this compact.

2. Upon compliance with the other provisions of this compact, an eligible state may become a party state by legislative enactment of this compact or by executive order of the governor of the state adopting this compact. A state becoming a party state by executive order ceases to be a party state upon adjournment of the first general session of its legislative assembly convened after the executive order is issued, unless before the adjournment the legislative assembly enacts this compact.
3. A party state, other than the host state, may withdraw from the compact by repealing the enactment of this compact, but this withdrawal does not become effective until two years after the effective date of the repealing legislation. If a party state which is a major generator of low-level radioactive waste voluntarily withdraws from the compact pursuant to this subsection, that state shall make arrangements for the disposal of the other party states' low-level radioactive waste for a time period equal the period of time it was a member of this compact.

If the host state withdraws from the compact, the withdrawal does not become effective until five years after the effective date of the repealing legislation.

4. A party state may be excluded from this compact by a two-thirds vote of the commission members, acting in a meeting, if the state to be excluded has failed to carry out any obligations required by this compact.
5. This compact takes effect upon the enactment by statute by the legislatures of California and at least one other eligible state and upon the consent of Congress and remains in effect until otherwise provided by federal law. This compact is subject to review by Congress and the withdrawal of the consent of Congress every five years after its effective date, pursuant to federal law.

ARTICLE VIII. CONSTRUCTION AND SEVERABILITY

1. This compact must be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state may not be infringed unnecessarily.
2. This compact does not affect any judicial proceeding pending on the effective date of this compact.
3. If any provision of this compact or the application thereof to any person or circumstances is held invalid, that invalidity does not affect other provisions or applications of the compact which can be given effect without the invalid provision or application, and to this end the provisions of this compact are severable.
4. Nothing in this compact diminishes or otherwise impairs the jurisdiction, authority, or discretion of either of the following:
 - a. The nuclear regulatory commission pursuant to the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

- b. An agreement state under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021).
- 5. Nothing in this compact confers any new authority on the states or commission to do any of the following:
 - a. Regulate the packaging or transportation of low-level radioactive waste in a manner inconsistent with the regulations of the nuclear regulatory commission or the United States department of transportation.
 - b. Regulate health, safety, or environmental hazards from source, byproduct, or special nuclear material.
 - c. Inspect the activities of licensees of the agreement states or of the nuclear regulatory commission.

Approved March 14, 1989

Filed March 15, 1989

CHAPTER 323

HOUSE BILL NO. 1349
(Representatives Tollefson, Haugland)
(Senator Maxson)

CEMETERY PERPETUAL CARE FUNDS

AN ACT to amend and reenact section 23-21.1-03 of the North Dakota Century Code, relating to cemetery perpetual care funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-21.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-21.1-03. Creation of perpetual care fund. Any organization subject to the provisions of this chapter which is organized or commences business in the state of North Dakota and desires to operate as a perpetual care cemetery shall, before selling or disposing of any interment space or lots, establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash, except that the minimum perpetual care and maintenance guarantee fund for organizations in operation on the effective date of this chapter shall be five thousand dollars. The perpetual care and maintenance guarantee fund shall be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. The district court shall have jurisdiction over the approval of trustees, reports and accounting of trustees, amount of surety bond required, and investment of funds as provided by chapter 59-04 relating to the administration of trust estates. Only the income from such fund shall be used for the care and maintenance of the cemetery for which it was established. All such organizations shall submit at least annually, to the district court, such reports as are required. The clerks of each of the district courts shall transmit copies of all reports, and rules and regulations enacted by the organization, to the state department of health and consolidated laboratories and the commissioner of banking and financial institutions.

To continue to operate as a perpetual care cemetery, any such organization shall set aside and deposit in the perpetual care fund not less than the following amounts for lots of interment space thereafter sold or disposed of:

1. A minimum of twenty percent of the gross selling price with a minimum of twenty dollars for each adult space, whichever is the greater.
2. A minimum of twenty percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches [106.8 millimeters] in length or ten dollars for each space up to sixty inches [1524 millimeters] in length, whichever is the greater.

3. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars for each space or crypt in a mausoleum, whichever is the greater, except a mausoleum located in a cemetery covered by a perpetual care fund which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community mausoleum itself shall contain a minimum of twenty percent of the cost of the construction of such public or community mausoleum.
4. A minimum of twenty percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a columbarium, except a columbarium located in a cemetery covered by a perpetual care fund which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community columbarium itself shall contain a minimum of twenty percent of the cost of the construction of such public or community columbarium.
5. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars, whichever is the greater, for each interment space in crypt gardens or any other structure or device by whatever name, established or constructed wholly or partially above the natural surface of the ground, for the interment of any dead human body.

There is no required perpetual care fund deposit on spaces provided without charge for paupers and infants.

The initial perpetual care fund established for any perpetual care cemetery shall remain in an irrevocable trust fund until such time as this fund has reached fifty thousand dollars. When the perpetual irrevocable trust fund equals fifty thousand dollars, an additional special trust fund shall be established into which fifty percent of the deposits required to be made into the irrevocable trust fund shall be made until the amount deposited into such special trust fund shall equal twenty-five thousand dollars. Thereafter, one hundred percent of the required deposit shall again be deposited in the perpetual irrevocable trust fund. The funds in the special trust fund may be used for the purpose of repaying or recouping the initial twenty five thousand dollar deposit, if such deposit were made. The administration of, and payments out of, the special trust fund shall be under the jurisdiction of the district court. Under special, unusual, or compelling circumstances and upon proper application to a district court, said court may in its discretion order withdrawals to be used only for permanent improvements.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 324

HOUSE BILL NO. 1108
(Committee on Agriculture)
(At the request of the State Department of
Health and Consolidated Laboratories)

VECTOR CONTROL DISTRICT DIRECTORS

AN ACT to amend and reenact section 23-24-05 of the North Dakota Century Code, relating to appointments to the board of commissioners of a vector control district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-24-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-24-05. Board of commissioners - Composition - Appointment - Term of office - Vacancy - Compensation. When an order of the council creating a vector control district has been filed in the office of the county auditor of a county in which the district or a part of the district is situated, a three-member board of commissioners of the vector control district must be appointed as provided by this section. Any resident freeholder in the district is eligible for appointment to the board of commissioners thereof. The term of commissioners first appointed must be determined by lot. One commissioner shall hold office for a term of two years, one shall serve for a term of three years, and one shall serve for a term of five years. The term of a commissioner shall commence on the date of appointment. If the office of a commissioner becomes vacant, the commissioner appointed to fill the vacancy shall serve the unexpired term of the member of the board of commissioners whom the new commissioner replaces. Any vacancy must be filled in the manner provided for original appointments. Appointments to the board of commissioners must be made by ~~the state health council from a list of names submitted to the council~~ by the board of county commissioners of the county containing the largest area of the vector control district. Any member of the board of commissioners may be removed upon a majority vote of the board of county commissioners that ~~nominates~~ appoints members for the board of commissioners and the board of commissioners may be dissolved upon a majority vote of the board of county commissioners that ~~nominates~~ appoints the members for the board. Each member shall receive the sum of thirty dollars per day while performing duties as a member of the board, or a lesser sum as the board may determine, an allowance for meals and lodging as provided in section 44-08-04, and mileage expense reimbursement at the rate provided in section 54-06-09.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 325

HOUSE BILL NO. 1133
(Committee on State and Federal Government)
(At the request of the State Department of
Health and Consolidated Laboratories)

ASBESTOS ABATEMENT

AN ACT to amend and reenact sections 23-25-01 and 23-25-03.1 of the North Dakota Century Code, relating to air pollution control.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-25-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-25-01. Definitions. For purposes of this chapter, the following words and phrases are defined:

1. "Air contaminant" means any solid, liquid, gas, or odorous substance, or any combination thereof.
2. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or may be injurious to human health, welfare, or property, animal or plant life, or which unreasonably interferes with the enjoyment of life or property.
3. "Air quality standard" means an established concentration, exposure time, or frequency of occurrence of a contaminant or multiple contaminants in the ambient air which may not be exceeded.
4. "Ambient air" means the surrounding outside air.
5. "Asbestos abatement" means any demolition, renovation, salvage, repair, or construction activity which involves the repair, enclosure, encapsulation, removal, handling, or disposal, and inspection of more than three square feet [0.28 square meters] or three linear feet [0.91 meters] of friable asbestos material; and. Asbestos abatement also means any inspections, preparation of management plans, and abatement project design for both friable and nonfriable asbestos material.
6. "Asbestos contractor" means any partnership, firm, association, corporation or sole proprietorship that contracts to perform asbestos abatement for another.
7. "Asbestos worker" means any person engaged in asbestos abatement except at the person's an employee or agent of an asbestos contractor, or a public employee engaged in the abatement of more than three square feet [0.28 square meters] or three linear feet

[0.91 meters] of friable asbestos material, except for individuals engaged in abatement at their private residence.

8. "Emission" means a release of air contaminants into the ambient air.
9. "Emission standard" means a limitation on the release of any air contaminant into the ambient air.
10. "Friable asbestos material" means any material containing more than one percent asbestos ~~by weight~~ that hand pressure or mechanical forces expected to act on the material can crumble, pulverize, or reduce to powder when dry.
11. "Indirect air contaminant source" means any facility, building, structure, or installation, or any combination thereof, which can reasonably be expected to cause or induce emissions of air contaminants.
12. "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative agency, or agency of the foregoing.

SECTION 2. AMENDMENT. Section 23-25-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-25-03.1. ~~Certification~~ licensing of asbestos contractors and, certification of their workers, and certification of public employees engaged in asbestos abatement. The department is charged with the responsibility of administering and enforcing a ~~certification~~ licensing program for asbestos contractors, and a certification program for their workers and for public employees engaged in asbestos abatement, and is given and charged with the following powers and duties:

1. To require training of, and to examine, asbestos ~~contractors and their workers on safe~~ and public employees performing asbestos abatement.
2. To establish standards and procedures for the ~~certification~~ licensing of contractors, and the ~~certification of their workers and of public employees,~~ engaging in the abatement of friable asbestos materials and to establish performance standards for asbestos abatement, ~~such~~. The performance standards ~~to~~ will be as stringent as those standards adopted by the United States environmental protection agency pursuant to section 112 of the Federal Clean Air Act [42 U.S.C. 1868].
3. To issue certificates to all applicants who satisfy the requirements for certification under this section and any rules under this section, to renew certificates and to suspend or revoke certificates for cause after notice and opportunity for hearing.
4. To establish an annual fee and renewal fees for ~~certifying~~ licensing asbestos contractors and certifying their workers and to

establish examination ~~and renewal~~ fees for asbestos workers and public employees engaged in asbestos abatement under section 23-25-04.2.

5. To establish indoor environmental nonoccupational air quality standards for asbestos.
6. To adopt and enforce rules as necessary for the implementation of this section.

The requirements of this section shall apply only to asbestos abatement conducted in buildings including, but not limited to, schools, government facilities, medical facilities, public buildings, residential buildings, motels, hotels, restaurants, or other commercial buildings, and any other buildings to which the public has unguided access or for which employee protection is not provided under the Federal Occupational Safety and Health Act.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 326

HOUSE BILL NO. 1039
(Legislative Council)
(Interim Budget Committee on Institutional Services)

AMBULANCE SERVICE CARE BY VOLUNTEERS

AN ACT to amend and reenact section 23-27-04.1 of the North Dakota Century Code, relating to emergency care or services rendered by officers, employees, or agents of ambulance service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-27-04.1. Emergency care or services rendered by officers, employees, or agents of ambulance service. No officer, employee, or agent of any ambulance service licensed to operate in this state who is an unpaid a volunteer, who in good faith renders emergency care or services at the scene of an accident, disaster, or other emergency, or in going to the scene, or en route to a treatment facility, is liable to the recipient of the emergency care or services for any civil damages resulting from any acts or omissions by the person in rendering the emergency care or services provided the person is properly trained according to law. For the purpose of this section, "volunteer" means an individual who receives no compensation or who is paid expenses, reasonable benefits, nominal fees, or a combination of expenses, reasonable benefits, and nominal fees to perform the services for which the individual volunteered provided that the fees do not exceed twenty-four hundred dollars in any calendar year. This section does not relieve a person from liability for damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 327

HOUSE BILL NO. 1040
(Legislative Council)
(Interim Budget Committee on Institutional Services)

AMBULANCE SERVICE STATE ASSISTANCE

AN ACT to create and enact a new section to chapter 23-27 of the North Dakota Century Code, relating to state assistance to licensed ambulance services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-27 of the North Dakota Century Code is hereby created and enacted to read as follows:

Licensed ambulance services - State assistance. The health services branch of the state department of health and consolidated laboratories shall assist in the training of personnel of certain ambulance services licensed under this chapter as determined by the branch and financially shall assist certain ambulance services licensed under this chapter as determined by the branch in obtaining equipment. Assistance provided under this section must be within the limits of legislative appropriation. The health services branch shall adopt criteria for eligibility for assistance in the training of personnel of various types of licensed ambulance services. To qualify for financial assistance for equipment, a licensed ambulance service shall certify, in the manner required by the health services branch, that the service has fifty percent of the amount of funds necessary for identified equipment acquisitions. The health services branch shall adopt a schedule of eligibility for financial assistance for equipment. The schedule must provide for a direct relationship between the amount of funds certified and the number of responses during the preceding calendar year for the purpose of rendering medical care, transportation, or both, to individuals who were sick or incapacitated. The schedule must require that as the number of responses increases, a greater amount of funds certified is required. The schedule must classify responses and the financial assistance available for various classifications. The health services branch may establish minimum and maximum amounts of financial assistance to be provided an ambulance service under this section. If applications for financial assistance exceed the amount of allocated and available funds, the health services branch may prorate the funds among the applicants in accordance with criteria adopted by the health services branch. The health services branch shall distribute the funds on June thirtieth of each year. No more than one-half of the funds appropriated by the legislative assembly each biennium and allocated for training assistance may be distributed in the first year of the biennium.

SECTION 2. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the health services branch give priority to training grants over equipment grants.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 328

HOUSE BILL NO. 1112
(Committee on Natural Resources)
(At the request of the State Department of
Health and Consolidated Laboratories)

ENVIRONMENTAL EMERGENCIES

AN ACT to provide for recovery of reasonable and necessary costs for environmental assessment and remediation as a result of environmental emergencies in violation of North Dakota environmental statutes and rules and to establish an environmental emergency response fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Environmental emergency cost recovery. The state department of health and consolidated laboratories may recover from the parties responsible for an environmental emergency the reasonable and necessary state costs incurred in assessment, removal, corrective action, or monitoring as a result of an environmental emergency in violation of chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, or 61-28.1. As used in this Act "environmental emergency" means a release into the environment of a substance requiring an immediate response to protect public health or welfare or the environment from an imminent and substantial endangerment and which is in violation of chapters 23-20.1, 23-20.3, 23-25, 23-29, 61-28, or 61-28.1, and "reasonable and necessary costs" means those costs incurred by the department as a result of the failure of the parties responsible for the environmental emergency to implement appropriate assessment and corrective action after receipt of written notice from the department. If assessment, removal, monitoring, or corrective action must be initiated prior to identification of the responsible parties, the department may assess those prior costs to the responsible parties at the time they are identified.

SECTION 2. Environmental quality restoration fund. There is established an environmental quality restoration fund into which the funds recovered in this chapter may be deposited. The fund is to be administered by the state department of health and consolidated laboratories and may be used by the state department of health and consolidated laboratories for costs of environmental assessment, removal, corrective action, or monitoring as determined on a case-by-case basis.

SECTION 3. Rules adoption. The state department of health and consolidated laboratories may adopt rules to implement this Act.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 329

HOUSE BILL NO. 1262
(Representatives Hokana, Dalrymple, Nicholas)
(Senators Dotzenrod, Kelsh, Thane)

PLASTIC PRODUCTS AND SOYBEAN INK

AN ACT to provide for the labeling of certain plastic products, to require certain plastic products to be degradable, and to provide for standards for rates of degradation; to create and enact a new section to chapter 54-44.4 of the North Dakota Century Code, relating to the purchase of soybean-based inks and starch-based plastics; and to provide penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 4 of this Act:

1. "Degradable" means capable of being reduced to environmentally benign subunits under the action of normal environmental forces, including biodegradation, photodegradation, chemical degradation, or hydrolysis within reasonable time lines specific for waste types and waste management methods.
2. "Department" means the state department of health and consolidated laboratories.
3. "Label" means a molded imprint or raised symbol.
4. "Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow.
5. "Plastic bottle" means a plastic container that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure, and has a capacity of at least sixteen fluid ounces [453.60 grams] but less than five gallons [18.93 liters].
6. "Rigid plastic container" means any formed or molded container, other than a bottle, intended for single use, composed predominately of plastic resin, and having a relatively inflexible finite shape or form with a capacity of at least eight ounces [226.80 grams] but not more than five gallons [18.93 liters].

SECTION 2. Degradation rates - Byproducts of degradation. The department, in cooperation with the American society for testing and materials, the United States environmental protection agency, and the national institute of standards and technology, shall adopt rules regarding the required rates of degradation and allowable byproducts of degradation. The department may require test data to demonstrate that a plastic is degradable including the rate of degradation and the by-products of the degradation.

SECTION 3. Plastic bottles and containers - Label - Penalty.

1. All plastic bottles and rigid plastic containers sold in this state after December 31, 1991, must have a label indicating the plastic resin used to produce the bottle or container. The numbers and letters used on the label must be at least one-half-inch [12.7-millimeters] high and must appear on the bottom of the plastic bottle or rigid plastic container. The label must consist of the following numbers, placed inside three triangulated arrows, and letters placed immediately below the three triangulated arrows depending on the plastic resin used. The triangulated arrows must be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow must be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle formed by the three arrows curved at their midpoints must depict a clockwise path around the code number. The numbers and letters used must be as follows:
 - a. 1 PETE if the product used is polyethylene terephthalate.
 - b. 2 HDPE if the product used is high density polyethylene.
 - c. 3 V if the product used is vinyl.
 - d. 4 LDPE if the product used is low density polyethylene.
 - e. 5 PP if the product used is polypropylene.
 - f. 6 PS if the product used is polystyrene.
 - g. 7 OTHER if the product used is multilayer.
 - h. 8 D if the product used is degradable.
2. The department shall maintain a list of the label code contained in this section and shall provide a copy of the list to any person upon request.
3. Any person who violates this section is guilty of an infraction.

SECTION 4. Degradable plastic rings - Penalty. No person may sell or offer for sale containers connected to each other by plastic rings unless the plastic rings are degradable and bear a distinguishing symbol. Any manufacturer of plastic rings used to connect containers to each other who sells or offers for sale or provides for the sale or offer for sale of those rings in this state shall design a distinguishing symbol indicating that the devices are degradable. The manufacturer must register the distinguishing symbol with the department and provide the department with a sample of the plastic rings. Any person who violates this section is guilty of a class B misdemeanor.

SECTION 5. A new section to chapter 54-44.4 of the North Dakota Century Code is hereby created and enacted to read as follows:

Specification for paper products and inks. The office of management and budget, the institutions of higher education, and any other state agency or institution that has authority to purchase products, are encouraged, whenever possible, when purchasing newsprint printing services, to specify the use of soybean-based ink. By July 1, 1990, at least fifteen percent of the garbage can liners purchased by the office of management and budget, the institutions of higher education, or a state agency or institution to which authority to purchase has been delegated must be starch based. The percentage of starch-based garbage can liners purchased must increase by five percent annually until at least fifty percent of the garbage can liners purchased are starch based. The office of management and budget shall review the procurement specifications currently used by the state to eliminate, wherever possible, discrimination against the procurement of products manufactured with starch-based plastics and soybean-based inks. The North Dakota corn growers association and the commissioner of agriculture shall assist the office of management and budget in locating suppliers of starch-based plastics and in collecting data on the purchase of starch-based plastics. The North Dakota soybean council and the commissioner of agriculture shall assist the office of management and budget in locating suppliers of soybean-based inks and in collecting data on the purchase of soybean-based inks. In requesting bids for paper products, starch-based plastic products, and soybean-based inks, the office of management and budget must request information on the recycled content of such products.

Approved April 10, 1989

Filed April 11, 1989

HIGHWAYS, BRIDGES, AND FERRIES

CHAPTER 330

SENATE BILL NO. 2469
(Senators Hilken, Freborg)
(Representatives Hokana, Dorso)

MOTOR VEHICLE TRANSFER CREDIT

AN ACT to amend and reenact section 24-02-03.4 of the North Dakota Century Code, relating to credit for transferring motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-03.4 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-03.4. Transfer of motor vehicles. The title or other documents representing ownership of a motor vehicle owned or leased by the state, except the board of higher education and the institutions under its jurisdiction, must be transferred to the commissioner on July 1, 1987. ~~If a transferred motor vehicle was originally purchased with dedicated or trust funds, the commissioner shall credit the purchaser with an amount equal to two-thirds of the national automobile dealers association wholesale value of the motor vehicle to be offset against future user charges. Any credit must be made available July 1, 1989, and be completed within ten years. The~~ commissioner may assign motor vehicles purchased with federal funds to the original purchaser or may pay the market value of the vehicle to the original purchaser.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 331

HOUSE BILL NO. 1178
(Committee on Transportation)
(At the request of the Highway Department)

HIGHWAY CONTRACT ARBITRATION

AN ACT to amend and reenact sections 24-02-26.1, 24-02-27, and 24-02-32 of the North Dakota Century Code, relating to the arbitration of claims on contracts for the construction or repair of highways.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-26.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-26.1. Condition precedent to contractor demand for arbitration - Claims for extra compensation. In addition to the provisions of section 24-02-30, full compliance by a contractor with the provisions of this section is a condition precedent to the contractor's right to demand arbitration. If the contractor believes the contractor is entitled to additional compensation for work or materials not covered in the contract or not ordered by the engineer as extra work or force account work in accordance with the contract specifications, the contractor shall, prior to beginning the work which the claim will be based upon, notify the engineer in writing of the intent to make claim for additional compensation. If the basis for the claim does not become apparent until the contractor has commenced work on the project and it is not feasible to stop the work, the contractor shall immediately notify the engineer that the work is continuing and that written notification of the intent to make claim will be submitted within ten calendar days. Failure of the contractor to give the notification required and to afford the engineer facilities and assistance in keeping strict account of actual costs will constitute a waiver of claim for additional compensation in connection with the work already performed. Notification of a claim, and the fact that the engineer has kept account of the costs involved, may not be construed as proving or substantiating the validity or actual value of the claim.

Any person submitting a claim for compensation under this section, personally or on behalf of another person or entity, shall do so in writing, stating not later than ninety days after the department has submitted the final estimate to the contractor. The claim must state the monetary amount of the claim, the reason for the claim, when the loss was incurred, and a short statement of the factual situation under which the claim arose. The claim must be made under oath or equivalent affirmation. The commissioner shall provide claim forms to persons requesting or indicating a need for them.

The commissioner shall act on the claim within sixty days after the claim is served upon the commissioner. The contractor and the commissioner may negotiate a supplemental agreement for the claim items that are accepted

by the commissioner, and the commissioner shall immediately pay the contractor for any additional compensation resulting from the supplemental agreement. The contractor may demand arbitration on the remaining claim items within ninety days after the contractor has been notified of the commissioner's action on the claim.

The contractor shall make available to the department and allow the department to examine and copy all of the contractor's records, documents, worksheets, and other data which are pertinent to the justification of the claim and to the substantiation of all costs related to the claim. The department shall also make available to the contractor all of the department's records, documents, worksheets, and other data which are pertinent to the department's response to the claim.

SECTION 2. AMENDMENT. Section 24-02-27 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-27. Arbitration demand - District court may appoint arbitrators if parties fail - Arbitration pool. The party desiring arbitration shall make a written demand therefor and in such demand shall name the arbitrator by him selected. He also in such demand shall set forth all the controversies and claims which he desires to submit to arbitration and a concise statement of his claims with reference to each controversy. Such demand shall be served upon the opposite party, who, within ten days, shall name in writing the arbitrator on his part, and in connection therewith shall set forth in writing his contentions with reference to the claims set forth in the demand served upon him and any additional claims or controversies which he desires to submit to arbitration on his part, with a concise statement of his claims in connection therewith. If the party proceeded against shall fail or refuse to name an arbitrator, the moving party may apply ex parte to the judge of the district court of the county in which the improvement in the contract in question, or any part thereof, may be located, for the appointment of the two additional arbitrators, and if upon the appointment of an arbitrator by each of the parties, the two so appointed have been unable to agree upon a third arbitrator within five days, then either party to the controversy, upon five days' notice, may apply to such district court for the appointment of such third arbitrator. The party desiring arbitration must serve a written demand upon the adverse party. The demand must designate an arbitrator and must describe and detail all claim items that are submitted to arbitration. The party served with the demand shall respond in writing within thirty days, and the response must designate a second arbitrator and must explain the respondent's position concerning each claim item. If the respondent does not designate the second arbitrator within thirty days, the claimant may apply to the district court of the judicial district in which the project, or any part of the project, is located for the appointment of the second arbitrator. If the two arbitrators do not designate the third arbitrator within thirty days after the second arbitrator is designated, either party may apply to the district court for the appointment of the third arbitrator. The proceedings in the district court are governed by the rules of civil procedure concerning motions.

All arbitrators shall be selected from an arbitration pool which shall consist of fifteen members. The members of the pool shall be appointed by the governor. The governor shall select members to the arbitration pool from lists submitted by the society of professional engineers, the association of general contractors, and the commissioner. The governor shall not select more than five names from any one of the lists submitted. Members of the

arbitration pool shall serve a term of two years ~~starting on July 1, 1983~~. If any vacancy occurs for any reason, the governor shall fill the vacancy for the unexpired term in the same manner as the original selection.

SECTION 3. AMENDMENT. Section 24-02-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-32. Further arbitration permitted — ~~Arbitration must be commenced within six months~~. If after the making of an award which requires the contractor to do further work, any controversies arise between the parties as to the doing of such work, ~~such~~ the controversies may be submitted to the same arbitrators on five days' notice for further determination.

~~No arbitration shall be had under this chapter unless commenced within six months after the right thereto has arisen.~~

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 332

SENATE BILL NO. 2270
(Senators Langley, Olson)
(Representatives Flaagan, Timm, V. Thompson)

HIGHWAY FUND INCOME USE

AN ACT to create and enact a new section to chapter 24-02 of the North Dakota Century Code, relating to formation, composition, and duties of the special road advisory committee; to amend and reenact section 24-02-37 of the North Dakota Century Code, relating to investment of the state highway fund and the use of income generated; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

24-02-37. State highway fund - ~~How expended~~ Priorities for expenditure - Use of investment income. The state highway fund, created by law and not otherwise appropriated and allocated, ~~shall~~ must be applied and used for the purposes ~~herein~~ named ~~and in this section, as follows:~~

1. Except for investment income as provided in subsection 3, the fund must be applied in the following order of priority:
 - ~~1. a.~~ The cost of maintaining the state highway system.
 - ~~2. b.~~ The cost of construction and reconstruction of highways in the amount necessary to match in whatever proportion may be required, federal aid granted to this state by the United States government for road purposes in North Dakota.
 - ~~3. c.~~ Any portion of the highway fund not allocated as provided in ~~subsections + subdivisions a and b~~ may be expended for the construction of state highways without federal aid or may be expended in the construction, improvement, or maintenance of such state highways.
2. All funds heretofore appropriated or hereafter appropriated or transferred to the department, whether earmarked or designated for special projects or special purposes or not, ~~shall~~ must be placed or transferred into a single state highway fund in the office of the state treasurer and any claims for money expended by the department upon warrants prepared and issued by the ~~department of accounts and purchases~~ office of management and budget and signed by the state auditor under ~~the provisions of this title~~ shall must be paid out of the state highway fund by the state treasurer; provided, however, that the commissioner shall keep and maintain complete and accurate records showing that all expenditures have

been made in accordance with legislative appropriations and authorizations.

3. The state treasurer shall deposit the moneys in the state highway fund in an interest-bearing account at the Bank of North Dakota. The state treasurer shall deposit any income derived from the deposit of the moneys in a special fund in the state treasury known as the special road fund. Moneys, and any earnings on the moneys, in the special road fund may be used, within the limits of legislative appropriation, exclusively for the construction and maintenance of access roads to and roads within recreational, tourist, and historical areas as designated by the commissioner with the advice of the special road advisory committee. Requests by political subdivisions or state agencies for funding from the special road fund must be made to the commissioner on forms designated by the commissioner. The commissioner may require the political subdivision or state agency to contribute to the cost of the project as a condition of any expenditure authorized from the special road fund.

SECTION 2. A new section to chapter 24-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Special road advisory committee. The special road advisory committee consists of one member of the senate transportation committee and one member of the senate appropriations committee appointed by the chairman of the legislative council and one member of the house of representatives transportation committee and one member of the house of representatives appropriations committee appointed by the chairman of the legislative council and also the game and fish commissioner, the director of state parks and recreation, the director of the economic development commission, and the highway commissioner. The committee shall meet at the call of the highway commissioner, who is chairman of the committee, to review requests for funding from the special road fund and to advise the highway commissioner regarding funding requested projects. All final decisions regarding funding requested projects are in the sole discretion of the highway commissioner. The members of the commission who are members of the legislative assembly must be compensated by the department, from moneys appropriated from the special road fund, for attendance at committee meetings at the rate provided in section 54-35-10 and are entitled to reimbursement for expenses incurred in attending the meetings in the amounts provided by law for other state officers.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 1991.

Approved April 28, 1989
Filed April 28, 1989

MENTALLY ILL AND RETARDED, TUBERCULAR, BLIND, AND DEAF

CHAPTER 333

HOUSE BILL NO. 1205

(Committee on State and Federal Government)

(At the request of the Office of Management and Budget)

DEVELOPMENTAL DISABILITY AND HUMAN RESOURCE PROGRAMS

AN ACT to provide for a committee on protection and advocacy for persons with developmental disabilities or mental illnesses; to amend and reenact sections 25-01-01.1, 50-26-01, 50-26-03, 50-26-04, and 50-27-03 of the North Dakota Century Code, relating to the placement of the state council on developmental disabilities and the governor's council on human resources within the office of the governor; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In sections 1 through 12 of this Act, unless the context otherwise requires:

1. "Abuse" means:

- a. Willful use of offensive, abusive, or demeaning language by a caretaker that causes mental anguish of any person with developmental disabilities;
- b. Knowing, reckless, or intentional acts or failures to act which cause injury or death to a developmentally disabled or mentally ill person or which placed that person at risk of injury or death;
- c. Rape or sexual assault of a developmentally disabled or mentally ill person;
- d. Corporal punishment or striking of a developmentally disabled or mentally ill person;
- e. Unauthorized use or the use of excessive force in the placement of bodily restraints on a developmentally disabled or mentally ill person; and
- f. Use of bodily or chemical restraints on a developmentally disabled or mentally ill person which is not in compliance with federal or state laws and administrative regulations.

2. "Advocacy" means action to assist or represent a person or group of persons with developmental disabilities or mental illnesses in securing their rights, obtaining needed services, investigating complaints, and removing barriers to identified needs.

3. "Advocate" means an employee of the project.

4. "Caretaker" means a person, organization, association, or facility who has assumed legal responsibility or a contractual obligation for the care of a person with developmental disabilities or mental illness, or a parent, spouse, sibling, other relative, or person who has voluntarily assumed responsibility for the person's care.
5. "Committee" means the committee on protection and advocacy.
6. "Complaint" means an allegation of a violation of human or legal rights, or a lack of needed services, which is not a report of abuse, neglect, or exploitation.
7. "Developmental disability" is a disability as defined in section 25-01.2-01.
8. "Eligibility for services" means persons eligible for services of the project, including:
 - a. An adult with developmental disabilities.
 - b. An adult suffering from a mental illness who is an inpatient or resident in a facility rendering care or treatment, even if the location of the person is unknown.
 - c. An adult suffering from a mental illness who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility.
 - d. An adult suffering from a mental illness who within the last ninety days was an inpatient or resident of a facility rendering care or treatment.
 - e. A child with developmental disabilities or a child with mental illness who meets the criteria of subdivision b, c, or d of this subsection is eligible for advocacy services.
 - f. A child with developmental disabilities or mental illness who is not an abused or neglected child as defined in chapter 50-25.1 is eligible for protective services.
9. "Exploitation", when committed by a caretaker or relative of, or any person in a fiduciary relationship with, a person with developmental disabilities or mental illness, means:
 - a. The taking or misuse of property or resources of a person with developmental disabilities or mental illness by means of undue influence, breach of fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means;
 - b. The use of the services of a person with developmental disabilities or mental illness without just compensation; or
 - c. The use of a person with developmental disabilities or mental illness for the entertainment or sexual gratification of others under circumstances that cause degradation, humiliation, or

mental anguish to the person with developmental disabilities or mental illness.

10. "Facility" means a school, residence center, group home, nursing home, foster home, boarding home, or other facility operated by any public or private agency, organization, or institution, which provides services to a person with developmental disabilities or mental illness.
11. "Mental health professional" means a mental health professional as defined in section 25-03.1-02.
12. "Mental illness" means significant mental illness or emotional impairment as determined by a mental health professional.
13. "Neglect" means:
 - a. Inability of a person with developmental disabilities or mental illness to provide food, shelter, clothing, health care, or services necessary to maintain the mental and physical health of that person;
 - b. Failure by any caretaker of a person with developmental disabilities or mental illness to meet, either by commission or omission, any statutory obligation, court order, administrative rule or regulation, policy, procedure, or minimally accepted standard for care of persons with developmental disabilities or mental illnesses;
 - c. Negligent act or omission by any caretaker which causes injury or death to a person with developmental disabilities or mental illness or which places that person at risk of injury or death;
 - d. Failure by any caretaker, who is required by law or administrative rule, to establish or carry out an appropriate individual program or treatment plan for a person with developmental disabilities or mental illness;
 - e. Failure by any caretaker to provide adequate nutrition, clothing, or health care to a person with developmental disabilities or mental illness;
 - f. Failure by any caretaker to provide a safe environment for a person with developmental disabilities or mental illness; and
 - g. Failure by any caretaker to maintain adequate numbers of appropriately trained staff at a facility providing care and services for persons with developmental disabilities or mental illnesses.
14. "Project" means the protection and advocacy project.
15. "Protective services" means actions to assist persons with developmental disabilities or mental illnesses who are unable to manage their own resources or to protect themselves from abuse, neglect, exploitation, or other hazards.

16. "Report" means a verbal or written communication, including an anonymous communication, alleging the abuse, neglect, or exploitation of a person with developmental disabilities or mental illness.

SECTION 2. Committee on protection and advocacy. The governor shall appoint a committee on protection and advocacy. The committee must consist of seven members who broadly represent or are knowledgeable about the needs of the persons served by the protection and advocacy project. The committee is responsible for the administrative supervision and direction and for the planning, design, implementation, and functioning of the project. The committee in its capacity of supervising and directing the project shall operate independently of the governor or any state agency that provides treatment, services, or habilitation to persons with developmental disabilities or mental illness.

SECTION 3. Director - Administrative authority. The committee shall appoint a director, who serves at the will of the committee. The committee shall set the salary of the director within the limits of the amount appropriated for salaries by the legislative assembly. The director shall employ necessary staff, including advocates, who must be classified under the state personnel merit system. The director and other employees of the project are entitled to reimbursement for expenses incurred in carrying out their duties at the same rate and in the same manner as other state officials and employees. The director, with the advice and consent of the committee, may adopt rules for administration of the project, the conduct of its employees, the performance of its business, and the custody, use, and preservation of the records, documents, and property pertaining to the committee. The director shall submit to the committee bimonthly reports concerning the status of revenue, expenditures, and protection or advocacy efforts engaged in by project personnel.

SECTION 4. Reporting of abuse, neglect, or exploitation - Immunity for good faith reports.

1. Every medical, mental health, or developmental disabilities professional, educational professional, police or law enforcement officer, or caretaker having knowledge of or reasonable cause to suspect that an adult with developmental disabilities or mental illness coming before the individual providing services in that individual's official or professional capacity is abused, neglected, or exploited shall report the circumstances of that abuse, neglect, or exploitation to the project. For the purposes of this section:
 - a. "Educational professional" means a professional providing educational services either at a school, academy, or other educational facility, or at a private facility or residence, as a teacher, professor, tutor, aid, administrator, or other education professional.
 - b. "Medical, mental health, or developmental disabilities professional" means a professional providing health care or services to persons with developmental disabilities or mental illnesses, on a full-time or part-time basis, on an individual basis or at the request of a caretaker, and includes a physician, medical examiner, coroner, dentist, optometrist,

chiropractor, nurse, physical therapist, mental health professional, hospital personnel, nursing home personnel, congregate care personnel, social worker, or any other person providing medical, mental health, or developmental disabilities services.

2. An individual not listed in subsection 1 having knowledge of or reasonable cause to suspect that an adult with developmental disabilities or mental illness is abused, neglected, or exploited may report those circumstances to the committee or the project.
3. An individual other than the alleged perpetrator participating in good faith in the making of a report, assisting an investigator, furnishing information to an advocate or other employee of the committee, or in providing protective services under this section, is immune from any liability, civil or criminal, that otherwise might result from the reporting of the alleged case of abuse, neglect, or exploitation.

SECTION 5. Retaliation - Presumptions - Penalty.

1. An employer that imposes any form of discipline or retaliation against an employee solely because the employee reported having knowledge of or reasonable cause to suspect that a person with developmental disabilities or mental illness was abused, neglected, or exploited is guilty of a class B misdemeanor.
2. A rebuttable presumption that retaliation has occurred arises when an adverse action is taken within ninety days of the report. For the purpose of this subsection, "adverse action" means any action taken against the reporter or the person with developmental disabilities or mental illness about whom the report was made by a facility or person involved in a report because of the report. Adverse action includes:
 - a. Discharge from or termination of the employment of the employee.
 - b. Demotion, negative work performance evaluation, reduction of hours worked or benefits or work privileges, or reduction in remuneration for services of the employee.
 - c. Restriction or prohibition of access by the employee to a facility or to the residents of the facility.
 - d. Discharge or transfer of the person with developmental disabilities or mental illness from or within a facility or from the supervision of a caretaker.
 - e. Failure of a facility to perform customary services for the person with developmental disabilities or mental illness.
3. It is a defense to any charge brought under this section that the good faith of the individual making the report, described in subsection 3 of section 4 of this Act, has been rebutted, but only as to actions taken against the employee.

SECTION 6. Authority of project. Pursuant to rules adopted by the committee, the project, within the limits of legislative appropriations, shall provide advocacy and protective services for persons with developmental disabilities and persons with mental illnesses. The rules adopted by the committee relating to the need for the consent of the client must balance the rights of persons with developmental disabilities or mental illnesses to privacy and to refuse services under section 11 of this Act with the committee's duties to protect the human and legal rights of persons eligible for services and to monitor facilities for compliance with federal and state laws and rules. The project may:

1. Represent persons with developmental disabilities or mental illnesses so that they may realize the rights and services to which they are entitled.
2. Investigate complaints and reports if the alleged incidents are reported to the committee or the project or if there is probable cause to believe that the incidents occurred.
3. Monitor individual habilitation or treatment plans, program plans, educational plans, facilities and programs, and all other services and care provided to persons with developmental disabilities or mental illnesses.
4. Employ counsel to represent clients to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of persons with developmental disabilities or mental illnesses, and employ counsel to represent the project or the committee when, in the opinion of the attorney general, a conflict of interest under the North Dakota Rules of Professional Conduct exists between the office of attorney general and the committee or the project, and the conflict cannot be avoided by the appointment of counsel under subsection 3 of section 54-12-01 or section 54-12-08.
5. Pursue legal, administrative, and other appropriate remedies to ensure the protection and the rights of persons with developmental disabilities or mental illnesses. Prior to instituting any legal action in a federal or state court on behalf of a person with developmental disabilities or mental illnesses, the project shall exhaust in a timely manner all administrative remedies if appropriate. If, in pursuing administrative remedies, the project determines that any matter with respect to that person will not be resolved within a reasonable time, the project may pursue alternative remedies, including the initiation of a legal action with the consent of the committee. However, exhaustion of administrative remedies is not a prerequisite to initiation of a legal action when that action is instituted to prevent or eliminate imminent serious harm to a person with developmental disabilities or mental illnesses.
6. Sign any criminal complaint necessary to protect the interests of any person with developmental disabilities or mental illness, or group of persons with developmental disabilities or mental illnesses, who appear to have been victimized by or subjected to criminal conduct.

7. Review each annual survey report and plan of corrections for cited deficiencies made pursuant to titles XVIII and XIX of the Social Security Act with respect to any facility rendering care or treatment to persons with developmental disabilities or mental illnesses.
8. Provide the public, on an annual basis, an opportunity to comment on the priorities established by, and the activities of the committee.
9. Establish a grievance procedure for clients or prospective clients to ensure that persons with developmental disabilities or mental illnesses have full access to the services of the committee.
10. Prepare an annual report to the legislative assembly and the governor describing the priorities, activities, accomplishments, and expenditures of the system.
11. Provide information on and referral to programs and services addressing the needs of persons with developmental disabilities or mental illnesses.
12. Accept and administer gifts, grants, or contracts with persons or organizations, including the federal government, on such terms as may be beneficial to the state.
13. Contract with any person, public or private, to carry out any responsibilities of the project under this Act.

SECTION 7. Access to records, facilities, and persons - Rules. A caretaker shall provide the project access to the person with developmental disabilities or mental illness and to the facility where the person resides. The committee shall adopt rules regarding access to the records of a client for the purpose of investigating complaints or reports and monitoring service delivery systems. Any rules adopted under this section must comply with subsection 4 of section 25-01.2-03, section 25-16-07, 42 U.S.C. 6042, and 42 U.S.C. 10805.

SECTION 8. Investigation of reports.

1. Upon receipt of any report of suspected abuse, neglect, exploitation, or a complaint made pursuant to sections 1 through 12 of this Act, the project shall assess the need for an investigation of the report or complaint. If the project determines that the report or complaint is warranted, the project shall investigate or cause the report or complaint to be investigated. For the purpose of investigating a report or a complaint, the project may:
 - a. Interview the alleged victim who has developmental disabilities or mental illness at any time of the day or night, with or without notice.
 - b. Interview any other individual who may have knowledge of the situation.

- c. Access all locations under the control of the caretaker where records or other information exist, including the residence of the alleged victim.
 - d. Coordinate investigations with other agencies, departments, or other entities providing services necessary or advisable for the person with developmental disabilities or mental illness.
 - e. Delegate investigatory powers to the extent necessary and appropriate to any person or entity.
2. This section does not limit the responsibilities of law enforcement agencies to enforce the laws of this state or preclude law enforcement agencies from investigating, as appropriate, any alleged criminal conduct.

SECTION 9. Conflict of interest. In any situation in which the project is representing, or has been requested to represent, two or more persons with developmental disabilities or mental illnesses, if those persons have conflicting interests in the matter for which the project is requested to act, the project may provide services to the first person making application for services for that purpose. Any additional person, with conflicting interests, may be referred to another agency or individuals for assistance.

SECTION 10. Confidentiality and privileged information.

1. All documents, records, information, memoranda, reports, complaints, or written or nonwritten communication in the possession of the committee, project, or any advocate relating to an identified or identifiable person with developmental disabilities or mental illness are confidential and are not subject to disclosure, except:
- a. When release is consented to in writing by all persons with developmental disabilities or mental illnesses identified or identifiable in the documents, records, information, memoranda, reports, complaints, or written or nonwritten communications;
 - b. In a judicial proceeding when ordered by the presiding judge; or
 - c. To officers of the law or, in the discretion of the committee, any other legally constituted board or agency serving the interests of persons with mental illness or developmental disabilities; or
 - d. To the parents of a minor who is an eligible person under sections 1 through 12 of this Act or legal guardians of the person with mental illness or developmental disability except that no information may be released to the person with mental illness who is the subject of the information when such release is prohibited by state or federal law.
2. Unless ordered by a court of competent jurisdiction, the name of a person who in good faith makes a report or complaint may not be released or disclosed by the committee or the project.

SECTION 11. Refusal of services - Alternatives. If a person with developmental disabilities or mental illness refuses an offer of services from the project and, in the judgment of the project, the person's life, safety, or health is seriously jeopardized, the project may petition a court of competent jurisdiction for the appointment of a guardian or conservator. The project may also refer the matter to an appropriate agency, department, or authority for possible civil action on behalf of the person with mental illness or developmental disabilities, or for criminal prosecution of any individual abusing, neglecting, or exploiting a person with mental illness or developmental disabilities.

SECTION 12. Penalties.

1. A person who permits or allows the unauthorized disclosure of reports or complaints obtained under sections 1 through 12 of this Act is guilty of an infraction.
2. A person who willfully fails to report the abuse, neglect, or exploitation of any person with developmental disabilities or mental illness, if required to report pursuant to sections 1 through 12 of this Act, is guilty of an infraction.

SECTION 13. AMENDMENT. Section 25-01-01.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-01-01.1. State council on developmental disabilities. There ~~is hereby created and shall~~ must be maintained in the state department of human ~~services~~ office of the governor a state council on developmental disabilities consisting of one representative of each of the following departments, divisions, institutions, and organizations designated by the head of such agency or organization:

1. Office of superintendent of public instruction.
2. North Dakota department of human services.
3. State department of health and consolidated laboratories.
4. Developmental center at Grafton ~~state school~~.
5. Job service North Dakota.
6. Director of institutions.

The council shall have consumer representation in conformity with federal regulations regarding developmental disabilities. All members of the council ~~shall~~ must be appointed by the governor from the list of designees provided by agency heads pursuant to this section. The council shall select its own officers who shall serve for a term of two years commencing on October first of each year. Meetings ~~shall~~ must be held at least twice a year or at the call of the chairman or upon notice in writing signed by not less than three members of the council. A simple majority of the council ~~shall constitute~~ constitutes a quorum and ~~shall have authority to~~ may act upon any matter coming before the council. Members of the council ~~shall be reimbursed~~ are entitled to reimbursement in the same manner and at the same rate provided by law for other state officials.

The council shall assist in the development of the state plan for developmental disabilities, monitor and evaluate the implementation of such state plan, review and comment on all state plans in the state which relate to programs affecting persons with developmental disabilities, provide protection and advocacy to developmentally disabled individuals when requested by a state department, division, institution, or organization, and establish a committee on professional standards and certification ~~that~~ which will develop rules ~~and regulations~~ for the certification of developmental disability professionals. The council, with the approval of the governor, shall appoint a full-time director who shall assist the council. The director must be classified under the state personnel merit system. The council shall also perform studies and surveys of the needs of developmentally disabled persons in North Dakota, and shall facilitate coordination of the activities of all state departments, divisions, agencies, and institutions having responsibilities in the field of developmental disabilities.

SECTION 14. AMENDMENT. Section 50-26-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-26-01. Establishment of governor's council on human resources - Certain committees to constitute - Appointment. There is hereby established a governor's council on human resources, to be maintained within the ~~department of human services, which shall~~ office of the governor. The council must consist of a committee on aging, a committee on children and youth, a committee on employment of ~~the~~ handicapped persons with disabilities, a commission on the status of women, and other committees having a related interest in human resources as may be appointed. Each of ~~these committees shall consist of an executive committee of no more than nine members; each of whom, except as provided by this section, shall~~ committee member must be appointed by the governor for a term of three years, staggered so that the terms of one-third of the members of each committee expire July first of each year, except that initial appointments to the committees ~~shall~~ must be made on the basis of a one-year term for one-third of the members of each committee; a two-year term for one-third of the members of each committee; and a full three-year term for the remaining members of each committee. At least one-third of the members appointed to the ~~executive~~ committee on children and youth must have expertise in the prevention of child abuse and neglect. Each of the ~~executive~~ committees of the governor's council on human resources may appoint to their committee the chairman of the mayor's committee or ~~his~~ the chairman's designated representative. A vacancy occurring other than by reason of the expiration of a term ~~shall~~ must be filled in the same manner as original appointments, except that ~~such~~ the appointment ~~shall~~ may be made for the remainder of the unexpired term only.

SECTION 15. AMENDMENT. Section 50-26-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-26-03. Human resources committees - Organization - Expenses. The governor's committees on aging, children and youth, ~~the employment of the~~ handicapped persons with disabilities, the commission on the status of women, and such other committees who have a related interest in human resources, at their first meetings after July first of each year, shall elect from their ~~executive~~ committee membership a chairman and vice chairman. Every meeting of each committee ~~shall~~ must be called by the chairman of ~~such~~ the committee and ~~shall~~ must be presided over by ~~such~~ the chairman unless ~~he~~ the chairman is unable to act, in which case the vice chairman shall succeed to the powers

and duties of the chairman. Each of the committee members ~~shall~~ is entitled to be paid for all necessary mileage and other actual expenses incurred in the performance of their official duties as members of such committees in the same amount and in the same manner as other state officials are paid.

SECTION 16. AMENDMENT. Section 50-26-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-26-04. Executive committee - Powers - Employment of executive director. The executive committee of the governor's council on human resources ~~shall consist~~ consists of the respective chairman and vice chairman of the committees ~~which that~~ constitute the council. They shall select a chairman from their membership and shall meet at such times and at such places as the chairman may direct. Members of the executive committee ~~shall~~ are entitled to receive the same mileage and expenses for performance of their official duties as is provided in section 50-26-03. ~~It is the duty of the~~ The executive committee to shall determine the number of meetings each committee shall hold, the areas in which they shall devote their time, and generally, ~~to~~ supervise all functions of any committee. The executive committee shall coordinate all functions of the council with other state departments, agencies, and other organizations and shall assure that the council cooperate with such departments, agencies, and other organizations wherever possible. The executive committee of the governor's council ~~shall~~, with the approval of the ~~executive director of the department of human services, governor, shall~~ appoint a full-time director of the council on human resources whose duty it is to assist the committees in any manner authorized by the executive committee of the council. The executive committee of the council may authorize the council director to employ such clerical help as they deem necessary. The compensation of the director and clerical help must be set by the ~~executive director of the department of human services~~ governor within appropriations by the legislative assembly. ~~A special operating fund for the governor's council on human resources must be maintained within the state treasury. All expenditures from such fund must be within the limits of legislative appropriations and must be made upon vouchers, signed and approved by the executive director of the department of human services or the executive director's designee. Upon approval of such vouchers by the office of the budget, warrant checks must be prepared by the office of management and budget. All moneys received as gifts, donations, or bequests and all federal moneys received must be deposited in the special operating fund. The state treasurer shall make periodic transfers upon order of the director of the office of management and budget from the governor's council on human resources general fund appropriation to such special operating fund whenever its balance falls so low as to require supplementation. The executive committee is authorized on behalf of the council to accept any federal funds and any other gifts and money from any source that may be offered to them.~~

SECTION 17. AMENDMENT. Section 50-27-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-27-03. Authority of the executive committee on children and youth. In addition to the powers and duties enumerated in section 50-26-02, the executive committee on children and youth of the governor's council on human resources ~~is authorized to~~ may:

1. Apply for and receive public funds from any source, devises, legacies, bequests, gifts, and donations from private individuals, organizations, or funds from any other source not contrary to law.
2. Meet at least twice each year for the purpose of administering the children's trust fund.
3. Create such advisory committees as may be deemed necessary to assure public involvement in the planning, development, and administration of the children's trust fund.
4. Hire or arrange for appropriate staff, as deemed necessary, to administer and maintain properly the children's trust fund.
5. Develop, implement, and periodically review a written plan to be used in administering the funds expended from and retained in the children's trust fund. The written plan must include the types of activities to be funded, the nature of organizations preferred for funding, the criteria for eligible fund applicants, and the mechanisms for the monitoring and evaluating of funded activities.
6. Award grants from the children's trust fund in accordance with this chapter and any rules that have been adopted.
7. Adopt, after public notice and an opportunity for comment has been given, any rules it determines to be necessary to carry out this chapter.
8. Contract with persons or organizations, including political subdivisions and school districts.
9. Prepare and submit to the executive director of the department of human services a report at the end of each biennium.

The executive director of the department of human services governor shall designate a person with a demonstrated expertise in the prevention of child abuse and neglect as executive secretary to the executive committee of the children and youth committee to assist in the administration of the children's trust fund.

SECTION 18. STATEMENT OF LEGISLATIVE INTENT. The legislative assembly recognizes that the capacity of the department of human services for accommodating the administrative needs and requirements of the developmental disabilities council exceeds that capacity within the governor's office. Therefore, it is the intent of the legislative assembly that the department of human services continue to provide administrative support for the developmental disabilities council. The administrative support by the department must continue to include fiscal management and financial reporting, contract preparation, management, and supplemental clerical and office assistance. It is also the intent of the legislative assembly that the developmental disabilities council remain an autonomous entity completely independent of the governor's council on human resources and that in no way is the developmental disabilities council accountable to the governor's council on human resources or its committees.

Approved April 15, 1989
Filed April 17, 1989

CHAPTER 334

SENATE BILL NO. 2072
(Senators Mathern, J. Meyer)
(Representatives R. Larson, Marks)

STATE HOSPITAL OBJECT

AN ACT to amend and reenact section 25-02-03 of the North Dakota Century Code, relating to the object of the state hospital at Jamestown.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 25-02-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-02-03. Object of state hospital. The state hospital is an institution for mental diseases serving specialized populations of the mentally ill, including persons suffering from drug addiction or alcoholism. The state hospital is one component of the North Dakota mental health delivery system and shall serve as a resource to community-based treatment programs. The state hospital shall, pursuant to rules adopted by the department of human services, receive and care for all mentally ill persons residing within this state who may be committed to its care, in accordance with the provisions of this title, and shall furnish to such those mentally ill persons all needed food, shelter, treatment, and support which may tend to restore their mental health or to alleviate their illness or suffering.

Approved April 19, 1989
Filed April 19, 1989

* NOTE: Section 25-02-03 was also amended by section 1 of House Bill No. 1038, chapter 335.

CHAPTER 335

HOUSE BILL NO. 1038
(Legislative Council)
(Interim Budget Committee on Human Services)

STATE HOSPITAL AND PUBLIC TREATMENT FACILITIES

AN ACT to amend and reenact sections 25-02-03 and 25-03.1-04 of the North Dakota Century Code, relating to the purpose of the state hospital and admissions to public treatment facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 25-02-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-02-03. Object of state hospital. The state hospital is an institution for mental diseases serving specialized populations of the mentally ill, including persons suffering from drug addiction or alcoholism. The state hospital is one component of the North Dakota mental health delivery system and serves as a resource to community-based treatment programs. The state hospital shall, pursuant to rules adopted by the department of human services, receive and care for all mentally ill persons, including persons suffering from drug addiction or alcoholism, residing within this state who may be committed to its care, in accordance with the provisions of this title, and shall furnish to such those mentally ill persons all needed food, shelter, treatment, and support which that may tend to restore their mental health or to alleviate their illness or suffering.

** SECTION 2. AMENDMENT. Section 25-03.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-04. Voluntary admission. An Pursuant to rules adopted by the department, an application for admission to the state hospital or a public treatment facility for observation, diagnosis, care, or treatment as a voluntary patient may be made by any person who is mentally ill, an alcoholic, or a drug addict, or who has symptoms of such illnesses. An application for admission as a voluntary patient may be made on behalf of a minor who is mentally ill, an alcoholic, or a drug addict, or who has symptoms of such illnesses, by his the minor's parent or legal guardian. The application may must be submitted to a public treatment facility or to the state hospital, both of which shall have the authority to admit and treat the applicant regional human services center, or, in an emergency, to the state hospital. Upon receipt of an application, the regional human service center must arrange for an evaluation of the applicant and must, if appropriate, treat the applicant, or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or the director shall immediately designate a physician, psychiatrist, clinical psychologist, or mental health professional to examine the patient.

Approved April 13, 1989
Filed April 13, 1989

* NOTE: Section 25-02-03 was also amended by section 1 of Senate Bill No. 2072, chapter 334.

** NOTE: Section 25-03.1-04 was also amended by section 4 of Senate Bill No. 2389, chapter 149.

CHAPTER 336

HOUSE BILL NO. 1106
(Committee on State and Federal Government)
(At the request of the Department of Human Services)

STATE HOSPITAL SUPERINTENDENT

AN ACT to amend and reenact section 25-02-04 of the North Dakota Century Code, relating to the qualifications of the superintendent of the state hospital.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-02-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-02-04. Superintendent to possess certain qualifications - Employees. The superintendent of the state hospital shall be a board eligible or board certified psychiatrist. ~~If the superintendent is board eligible, he or she shall accomplish board certification within three years of the date of his or her appointment, or of July 21, 1987, whichever is later.~~ A board eligible psychiatrist appointed as superintendent after July 1, 1989, must accomplish board certification within three years after the date of appointment. The superintendent shall appoint with the approval of the executive director of the department of human services an assistant superintendent of administration who shall be under the superintendent's supervision and who shall be a qualified and experienced hospital administrator. The superintendent shall appoint and employ the professional staff and define their qualifications and duties. Every physician on the professional staff must have a license issued by the state board of medical examiners. The assistant superintendent shall employ such other personnel as may be necessary and shall define their qualifications and duties.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 337

HOUSE BILL NO. 1599
(Representatives J. DeMers, Rydell)
(Senators Mathern, Nalewaja)

RESIDENTIAL TREATMENT CENTERS FOR CHILDREN

AN ACT to create and enact a new chapter to title 25 of the North Dakota Century Code, relating to licensing of residential treatment centers for children; to amend and reenact section 50-11-01.3 of the North Dakota Century Code, relating to the use of public funds for foster care; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 25 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Clinical supervision" means the oversight responsibility for individual treatment plans and individual service delivery, provided by qualified mental health professionals.
2. "Department" means the department of human services.
3. "Diagnostic assessment" means a written summary of the history, diagnosis, and individual treatment needs of a mentally ill person using diagnostic, interview, and other relevant assessment techniques provided by a mental health professional.
4. "Individual treatment plan" means a written plan of intervention, treatment, and services for a mentally ill person that is developed under the clinical supervision of a mental health professional on the basis of a diagnostic assessment.
5. "Mentally ill person" has the same meaning provided for in section 25-03.1-02.
6. "Qualified mental health professional" means a licensed physician who is a psychiatrist, a licensed clinical psychologist who is qualified for listing on the national register of health service providers in psychology, a licensed certified social worker who is a board-certified diplomate in clinical social work, or a nurse who holds advanced licensure in psychiatric nursing.
7. "Residential treatment" means a twenty-four hour a day program under the clinical supervision of a mental health professional, in a community residential setting other than an acute care hospital, for the active treatment of mentally ill persons.

8. "Residential treatment center for children" means a facility or a distinct part of a facility that provides to children and adolescents, a total, twenty-four hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be effectively treated in their own family, in another home, or in a less restrictive setting.

License required. The operator of a publicly or privately operated residential treatment center for children shall meet the requirements for licensure and shall secure a license from the department.

Requirements for license. The department shall issue a license for the operation of a residential treatment center for children upon a showing that:

1. The premises to be used are in fit, safe, and sanitary condition and properly equipped to provide good care and treatment;
2. The program director of the center holds, at a minimum, a master's degree in social work, psychology, or in a related behavioral science with at least two years of professional experience in the treatment of children and adolescents suffering from mental illnesses or emotional disturbances. The executive director of the center must have, at a minimum, a bachelor's degree in a behavioral science or a bachelor's degree in any field and two years of experience in administration;
3. The staff employed by the center is supervised by the program director and qualified by training and experience to provide services to children and adolescents suffering from mental illnesses or emotional disturbances. The center annually must provide training to staff which is relevant to the needs of the client population;
4. The health, safety, and well-being of the residents cared for and treated in the center will be properly safeguarded;
5. There is sufficient treatment, educational, recreational and leisure, and physical facilities and services available to the residents in the center;
6. The center will provide for a medical and psychological examination of each resident within seventy-two hours of admission and thereafter as needed by the resident;
7. An interdisciplinary team consisting of at least one qualified mental health professional will review each individual treatment plan at least monthly and update or amend the plan to meet the needs of the resident; and
8. The center is in compliance with this chapter and with rules adopted under this chapter.

Conviction not bar to licensure - Exceptions. Conviction of an offense by an owner or operator of a center does not disqualify the center from licensure unless the department determines that the offense has a direct bearing upon a person's ability to serve the public as an owner or operator of a treatment center for children, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

Content of license. The license to operate a treatment center for children must specify:

1. The name of the licensee.
2. The premises to which the license is applicable.
3. The number of residents who may be received in the premises at any one time.
4. The date of expiration of the license.

Admission criteria. A child may be admitted to a residential treatment center for children if, the child has been diagnosed by a psychiatrist or psychologist as suffering from a mental illness or emotional disturbance and the child is in need of and able to respond to active psychotherapeutic intervention and cannot be effectively treated in the child's family, in another home, or in a less restrictive setting. The center must take into account the age and diagnosis of the child in order to provide an environment that is safe and therapeutic for all residents.

Method of providing service. A residential treatment center for children shall provide for the development of an individual treatment plan, based upon a comprehensive interdisciplinary diagnostic assessment, which includes the role of the family, identifies the goals and objectives of the residential treatment, provides a schedule for accomplishing treatment goals and objectives, and identifies the individuals responsible for providing services, consistent with the treatment plan, to residents. Clinical supervision of the treatment plan must be accomplished by full-time or part-time employment of or contracts with qualified mental health professionals. Clinical supervision must be documented by the qualified mental health professionals cosigning individual treatment plans and by entries in the resident's record regarding supervisory activity.

Revocation or denial of license. The department may revoke a license or deny an application for a license under this chapter if:

1. Any requirement and condition of this chapter for the issuance of a license is not met, or has ceased to be met;
2. The license was issued or requested upon fraudulent or untrue representations;
3. The owner or operator has violated any rule of the department; or
4. The owner, operator, or an employee of the center is or has been found guilty of an offense determined by the department to have a direct bearing on the person's ability to serve as an owner, operator, or employee, or the department determines, following

conviction of an offense, that the person is not sufficiently rehabilitated under section 12.1-33-02.1.

Hearing on denial or revocation of license. In any case in which the department determines that a license should be revoked or an application for a license should be denied, written reasons for the revocation or denial must be provided to the licensee or applicant. The licensee or applicant is entitled to a hearing before the department if a hearing is requested within ten days after the charges are provided.

Department may adopt rules. The department may adopt rules for the conduct of residential treatment centers for children.

SECTION 2. AMENDMENT. Section 50-11-01.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-11-01.3. Use of public funds. Public funds for the purchase of foster care for children shall be used only in ~~licensed~~ homes or facilities. ~~The provisions of this licensed or approved by the department of human services. This section shall does not apply to any home or institution under the management and control of the state.~~

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 338

HOUSE BILL NO. 1127
(Committee on Human Services and Veterans Affairs)
(At the request of the Department of Human Services)

STATE DEVELOPMENTAL CENTER CONTROL

AN ACT to create and enact a new section to chapter 25-04 of the North Dakota Century Code, relating to chapter limitations; to amend and reenact section 25-04-01 of the North Dakota Century Code as amended by section 1 of chapter 310 of the 1985 Session Laws of North Dakota, section 25-04-01 of the North Dakota Century Code as amended by section 1 of chapter 311 of the 1985 Session Laws of North Dakota, section 25-04-03 of the North Dakota Century Code as amended by section 3 of chapter 311 of the 1985 Session Laws of North Dakota, and subsection 3 of section 25-04-16 of the North Dakota Century Code, relating to the state developmental center at Grafton; and to repeal sections 25-04-03.1 and 25-04-05.2 of the North Dakota Century Code, section 25-04-03.1 of the North Dakota Century Code as amended by section 4 of chapter 311 of the 1985 Session Laws of North Dakota, and section 11 of chapter 311 of the 1985 Session Laws of North Dakota, relating to San Haven and the organization of the department of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 25-04-01 of the North Dakota Century Code as amended by section 1 of chapter 310 of the 1985 Session Laws is hereby amended and reenacted to read as follows:

25-04-01. State developmental center - ~~Maintained~~ - Name - ~~Administration and control. An institution for the mentally deficient~~ A facility for developmentally disabled persons shall be maintained at or near the city of Grafton in the county of Walsh County. Such institution ~~The facility shall be known and designated as the state developmental center at Grafton. There shall be maintained near Dunseith, in the county of Rolette, a division of the state developmental center at Grafton which shall be known as San Haven.~~ The department of human services shall have administrative authority and control of the state developmental center at Grafton.

* SECTION 2. AMENDMENT. Section 25-04-01 of the North Dakota Century Code as amended by section 1 of chapter 311 of the 1985 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

25-04-01. State ~~school~~ developmental center - Name - ~~Administration and control. An institution for the developmentally disabled~~ A facility for developmentally disabled persons shall be maintained at or near the city of Grafton in the county of Walsh County. The institution ~~facility shall be known and designated as Grafton state school the state developmental center at Grafton. There shall be maintained near Dunseith, in the county of Rolette, a division of the Grafton state school which shall be known as San~~

* NOTE: Section 25-04-01 was also amended by sections 4 and 5 of House Bill No. 1229, chapter 239.

~~Haven. The department of human services shall have administrative authority and control of Grafton state school and San Haven the state developmental center at Grafton.~~

SECTION 3. AMENDMENT. Section 25-04-03 of the North Dakota Century Code as amended by section 3 of chapter 311 of the 1985 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

25-04-03. Qualifications of superintendent. The superintendent of the state developmental center at Grafton state school shall be a skilled administrator with professional training and experience relating to the needs of the developmentally disabled. The superintendent shall designate a qualified and duly licensed physician as chief of medical staff and such chief of staff shall have the power, with advice and consent of the superintendent, to employ and discharge additional physicians, nurses, and professional assistants and shall be responsible for defining their qualifications and duties. All other employees shall be appointed and removed by the superintendent or a personnel director to be named by him by the superintendent's designee. The salaries of all employees shall be fixed by the superintendent or the personnel director the superintendent's designee within the limits of the legislative appropriations made for such purpose. The superintendent of the Grafton state school shall also serve as the superintendent of San Haven. The superintendent shall appoint an assistant superintendent who shall be the chief administrative officer of San Haven. The superintendent shall designate a qualified and duly licensed physician as chief of medical staff who will with the advice and consent of the superintendent employ the necessary physicians. All other employees shall be appointed by the assistant superintendent with the advice and consent of the superintendent. The assistant superintendent shall make certain that records on each resident be maintained as required by the department of human services and the superintendent. The assistant superintendent, with the advice and consent of the superintendent and the department of human services, shall determine the salaries of all employees at San Haven within the limits of legislative appropriations.

* SECTION 4. AMENDMENT. Subsection 3 of section 25-04-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. As used in this chapter, "supervising department" means the director of institutions, or the director's designee department of human services.

SECTION 5. A new section to chapter 25-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Limitations of this chapter. The provisions of this chapter may not be construed to limit or broaden the plaintiff class as defined by order of the United States district court for the district of North Dakota entered on January 13, 1981, in civil number A1-80-141.

SECTION 6. REPEAL. Sections 25-04-03.1 and 25-04-05.2 of the 1987 Supplement to the North Dakota Century Code, section 25-04-03.1 of the North Dakota Century Code as amended by section 4 of chapter 311 of the 1985 Session Laws of North Dakota, and section 11 of chapter 311 of the 1985 Session Laws of North Dakota are hereby repealed.

Approved April 10, 1989
Filed April 11, 1989

* NOTE: Subsection 3 of section 25-04-16 was also amended by section 26 of Senate Bill No. 2056, chapter 69.

CHAPTER 339

HOUSE BILL NO. 1198

(Committee on State and Federal Government)

(At the request of the Office of Management and Budget)

SUPERINTENDENT OF SCHOOLS FOR DEAF AND BLIND

AN ACT to amend and reenact sections 25-06-03 and 25-07-02 of the North Dakota Century Code, relating to the consolidation of the offices of superintendent of the school for the deaf and the school for the blind.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 25-06-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-06-03. Superintendent to possess certain qualifications. The superintendent of the school for the blind, who shall also act as superintendent of the school for the deaf, shall possess such qualifications, educational and otherwise, as in the opinion of the director of institutions will fit him the superintendent to instruct and minister to the needs of blind and deaf persons.

SECTION 2. AMENDMENT. Section 25-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-07-02. Superintendent to possess certain qualifications - Special duties. The superintendent of the school for the deaf shall be a capable person skilled in the sign language and in all the methods in use in educating the deaf and shall have knowledge of the wants and requirements of the deaf in their proper training and instruction. He shall reside at the institution deaf shall also act as superintendent of the school for the blind.

Approved March 21, 1989

Filed March 23, 1989

* NOTE: Section 25-06-03 was also amended by section 7 of House Bill No. 1229, chapter 239.

CHAPTER 340

HOUSE BILL NO. 1243
(Marks, Kolbo, P. DeMers, J. DeMers, Myrdal)

SERVICE DOGS IN HEALTH CARE FACILITIES

AN ACT to amend and reenact section 25-13-02 of the North Dakota Century Code, relating to the use of service dogs in public places, including facilities of health care providers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-13-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-13-02. Blind or handicapped person accompanied by guide or service dog to be admitted to public places. Every totally or partially blind person has the right to be accompanied by a guide dog and every handicapped person has the right to be accompanied by a service dog, especially trained for those purposes, in places of public accommodations, common carriers, facilities of a health care provider, and all places in which the public is generally invited, without being required to pay an extra charge for the guide or service dog; provided, that such persons are liable for any damage done to the premises or facilities by the dogs.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 14, 1989
Filed March 15, 1989

INSURANCE

CHAPTER 341

HOUSE BILL NO. 1297
(Representatives Whalen, Wald, Skjerven)
(Senators Todd, Krauter)

PETROLEUM RELEASE COMPENSATION

AN ACT to provide for cleanup of petroleum spills through the establishment of a petroleum release compensation fund; to provide a penalty; to provide a continuing appropriation; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Declaration of purpose. It is hereby declared to be the purpose of this Act to establish:

1. A petroleum tank release compensation fund; and
2. A petroleum tank release compensation advisory board authorized to review claims against the fund.

SECTION 2. Definitions. As used in this Act, unless the context otherwise requires:

1. "Administrator" means the manager of the state fire and tornado fund.
2. "Board" means the petroleum release compensation advisory board.
3. "Corrective action" means an action taken to minimize, contain, eliminate, remediate, mitigate, or clean up a release, including any remedial emergency measures. The term does not include the repair or replacement of damaged equipment.
4. "Dealer" means any person licensed by the tax commissioner to sell motor vehicle fuel or special fuels within the state.
5. "Department" means the state department of health and consolidated laboratories.
6. "Fund" means the petroleum release compensation fund.
7. "Operator" means any person in control of, or having responsibility for, the daily operation of a tank under this Act.
8. "Owner" means any person who holds title to controls or possesses an interest in the tank before the discontinuation of its use.
9. "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission,

political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

10. "Petroleum" means any of the following:
 - a. Gasoline and petroleum products as defined in chapter 19-10.
 - b. Constituents of gasoline and fuel oil under subdivision a.
 - c. Oil sludge and oil refuse.
11. "Release" means any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment whether occurring before or after the effective date of this Act, but does not include discharges or designed venting allowed under federal or state law or under adopted rules.
12. "Tank" means any one or a combination of containers, vessels, and enclosures, whether aboveground or underground, including associated piping or appurtenances used to contain an accumulation of petroleum. Exemptions from this definition include:
 - a. Tanks owned by the federal government;
 - b. Tanks used for the transportation of petroleum; and
 - c. A pipeline facility, including gathering lines, regulated under:
 - (1) The Natural Gas Pipeline Safety Act of 1968.
 - (2) The Hazardous Liquid Pipeline Safety Act of 1979.
 - (3) An interstate pipeline facility regulated under state laws comparable to the provisions of law in paragraph 1 or 2 of this subdivision.
 - d. A farm or residential tank with a capacity of one thousand one hundred gallons [4163.94 liters] or less used for storing motor fuel for noncommercial purposes.
 - e. A tank used for storing heating oil for consumptive use on the premises where stored.
 - f. A surface impoundment, pit, pond, or lagoon.
 - g. A flowthrough process tank.
 - h. A liquid trap or associated gathering lines directly related to oil or gas production or gathering operations.
 - i. A storage tank situated in an underground area such as a basement, cellar, mine working, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

j. A tank used for the storage of propane.

13. "Tariff" means a fee imposed on all petroleum products subject to the taxes imposed under chapters 57-43.1 and 57-43.2, except liquefied petroleum.

SECTION 3. Petroleum release compensation advisory board. The petroleum release compensation advisory board consists of three members, two of whom are active in petroleum marketing, appointed by the governor. Members must be appointed to terms of three years with the terms arranged so that the term of one member expires June thirtieth of each year. A member shall hold office until a successor is duly appointed and qualified. Each member of the board shall receive sixty-two dollars and fifty cents per diem for each day actually spent in the performance of official duties, plus mileage and expenses as are allowed to other state officers.

SECTION 4. Administration of fund - Staff. The administrator shall administer the fund according to this Act. The administrator shall convene the board as is necessary to keep the board apprised of the fund's general operations and to discuss all claims against the fund. The administrator may employ any assistance and staff necessary to administer the fund within the limits of legislative appropriation.

SECTION 5. Adoption of rules. The administrator shall adopt rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures for determining the amount and type of costs that are eligible for reimbursement from the fund, and procedures for persons to perform services for the fund.

SECTION 6. Release discovery. If the department has reason to believe a release has occurred, it shall notify the administrator and the board. The department shall direct the owner or operator to take reasonable and necessary corrective actions as provided under federal or state law or under adopted rules.

SECTION 7. Owner or operator not identified. The department may cause legal action to be brought to compel performance of a corrective action if an identified owner or operator fails or refuses to comply with an order of the department, or the department may engage the services of qualified contractors for performance of a corrective action if an owner or operator cannot be identified.

SECTION 8. Imminent hazard. Upon receipt of information that a petroleum release has occurred which may present an imminent or substantial endangerment of health or the environment, the department may take such emergency action as it determines necessary to protect health or the environment.

SECTION 9. Duty to notify. Nothing in this Act limits any person's duty to notify the department and to take action related to a release. However, payment for corrective actions required as a result of a petroleum release is governed by this Act.

SECTION 10. Providing of information. Any person whom the administrator or the department has reason to believe is an owner or operator, or the owner of real property where corrective action is ordered to

be taken, or any person who may have information concerning a release, shall, if requested by the administrator or the department, or any member, employee, or agent of the administrator or the department, furnish to the administrator or the department any information that person has or may reasonably obtain that is relevant to the release.

SECTION 11. Examination of records. Any employee of the administrator or the department may, upon presentation of official credentials:

1. Examine and copy books, papers, records, memoranda, or data of any person who has a duty to provide information to the administrator or the department under section 10 of this Act; and
2. Enter upon public or private property for the purpose of taking action authorized by this section, including obtaining information from any person who has a duty to provide the information under section 10 of this Act, conducting surveys and investigations, and taking corrective action.

SECTION 12. Responsibility for cost. The owner or operator is liable for the cost of the corrective action required by the department, including the cost of investigating the releases, and for legal actions of the administrator or the department. This Act does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund or licensed dealers.

SECTION 13. Liability avoided. No owner or operator may avoid liability by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold harmless agreement, or similar agreement. However, the provisions of this Act do not:

1. Prohibit a person who may be liable from entering into an agreement by which the person is insured or is a member of a risk retention group, and is thereby indemnified for part or all of the liability;
2. Prohibit the enforcement of an insurance, hold harmless, or indemnification agreement; or
3. Bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

SECTION 14. Other remedies. Nothing in this Act limits the powers of the administrator or department, or precludes the pursuit of any other administrative, civil, injunctive, or criminal remedies by the administrator or department or any other person. Administrative remedies need not be exhausted in order to proceed under this Act. The remedies provided by this Act are in addition to those provided under existing statutory or common law.

SECTION 15. Revenue to the fund. Revenue from the following sources must be deposited in the state treasury and credited to the fund:

1. Any tariffs imposed by sections 16 and 17 of this Act;
2. Any registration fees collected under section 21 of this Act;

3. Any money recovered by the fund under section 27 of this Act, and any money paid under an agreement, stipulation, or settlement;
4. Any interest attributable to investment of money in the fund; and
5. Any money received by the administrator in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the purposes of the fund.

SECTION 16. Tariff authorized. The administrator shall notify the state tax commissioner to collect the tariff authorized by section 17 of this Act and the tax commissioner shall collect the tariff beginning July 1, 1989, until the fund reaches three million dollars, at which time the tariff shall temporarily cease being collected. If the unexpended balance of the fund falls below one million dollars, the administrator shall reinstate the tariff established in section 17 of this Act. The tariff must be collected until the fund is equal to or exceeds three million dollars during any full tariff collection period. Reasonable forecasts of future expenses and income may be used in imposing and ceasing to collect the fund tariff.

SECTION 17. Tariff levied. A dealer shall pay to the tax commissioner a tariff of nine-fortieths of a cent per gallon [3.79 liters] for every gallon [3.79 liters] of gasoline, kerosene, tractor fuel, heating oil except liquefied petroleum, or diesel fuel subject to taxation under chapters 57-43.1 and 57-43.2. The dealer shall collect the tariff from the purchaser or user and, notwithstanding any other provision of law, the tariff may not be refunded. The tariff must accompany the monthly report required by section 18 of this Act. The tax commissioner shall forward all money collected under this section to the state treasurer monthly, and the treasurer shall place the money in the petroleum release compensation fund for the sole purpose of reimbursement of corrective costs authorized under this Act. The provisions of chapters 57-43.1 and 57-43.2 pertaining to the administration of motor vehicle fuel and special fuels not in conflict with this Act govern the administration of the tariff levied by this section. To aid and monitor the collection of the tariff, the administrator and the tax commissioner may exchange information provided by the dealer.

SECTION 18. Report of petroleum products. No later than the twenty-fifth day of each calendar month, a dealer shall send to the tax commissioner a correct report of all purchases and sales of gasoline, kerosene, tractor fuel, heating oil, or diesel fuel during the preceding month. The report must include the same information as required by chapters 57-43.1 and 57-43.2 for motor vehicle fuel and special fuels tax collection purposes.

SECTION 19. Bond required of dealer. The tax commissioner may require a dealer to furnish a surety bond payable to the state in the sum of five hundred dollars, or twice the amount of tariffs due from the dealer for any calendar month during the preceding year, whichever amount is greater, guaranteeing true reports of purchases and sales of gasoline, kerosene, tractor fuel, heating oil, and diesel fuel and payment of all tariffs imposed under section 17 of this Act. The tax commissioner shall determine the sufficiency of the bond. A bond may cover delinquent tariffs for one or all of the petroleum products subject to a tariff under section 17 of this Act. When a tariff is not paid within twenty days after it is due, the bond is forfeited to the extent of the delinquent tariff.

SECTION 20. Penalty. A dealer violating this Act is guilty of a class B misdemeanor, unless another penalty is specifically provided.

SECTION 21. Registration fee. An owner or operator of a tank shall pay an annual registration fee of ten dollars for each aboveground tank and twenty-five dollars for each underground tank owned or operated by that person. The registration fees collected under this section must be paid to the administrator for deposit in the state treasury for credit to the petroleum release compensation fund.

SECTION 22. Reimbursement for corrective action. The administrator shall reimburse an eligible owner or operator for ninety percent of the costs of corrective action, including the investigation, which are greater than seven thousand five hundred dollars and less than one hundred thousand dollars. A reimbursement may not be made unless the administrator determines that:

1. At the time of release, the owner or operator and the tank were in compliance with state and federal rules and rules applicable to the tank, including rules relating to financial responsibility which were in effect at the time of the release;
2. The department was given notice of the release as required by federal and state law;
3. The owner or operator has paid the first seven thousand five hundred dollars of the cost of corrective action; and
4. The owner or operator, to the extent possible, fully cooperated with the department and the administrator in responding to the release.

SECTION 23. Application for reimbursement. Any owner or operator who proposes to take corrective action or has undertaken corrective action in response to a release, the time of such release being unknown, may apply to the administrator for partial or full reimbursement under section 22 of this Act. An owner or operator may be reimbursed only for releases discovered and reported after the effective date of this Act.

SECTION 24. Administrator to determine costs. A reimbursement may not be made from the fund until the administrator has determined that the costs for which reimbursement is requested were actually incurred and were reasonable.

SECTION 25. Liability of responsible person. The right to apply for reimbursement and the receipt of reimbursement does not limit the liability of an owner or operator for damages or costs incurred as the result of a release.

SECTION 26. Reimbursement not subject to attachment. The amount of reimbursement to be paid for corrective action that was done by a third party is not subject to legal process or attachment if actually paid to a third party who performed the corrective action.

SECTION 27. Recovery of expenses. Any reasonable and necessary expenses incurred by the fund, which exceed the amount allowed by section 22 of this Act, in taking a corrective action, including costs of investigating

a release, and in taking legal actions may be recovered in a civil action in district court brought by the administrator against an owner or operator. The certification of expenses by an approved agent of the fund is prima facie evidence that the expenses are reasonable and necessary. Any expenses that are recovered under this section must be deposited in the fund.

SECTION 28. Costs exceeding reimbursement. If the cost of any extraordinary authorized action under this Act exceeds amounts awarded to the administrator or the department from the federal government, the administrator may pay the department the cost of the corrective actions, including the cost of investigating a release, if the board finds that the cause was a petroleum substance, that an adequate amount exists in the fund to pay for the corrective action, that the occurrence was extraordinary in scope and size, and that a danger to the health and safety of citizens exists.

SECTION 29. Administrator may borrow startup funds. If necessary, the administrator may borrow up to twenty thousand dollars from other funds of the state for startup, cost of administration, and organizational expenses, which amount must be repaid with interest at the rate of ten percent per annum after the effective date of this Act as money becomes available from collection of the tariff or registration fees.

SECTION 30. Report to legislative assembly and governor. The administrator and the board shall prepare by December 1, 1990, a report to the legislative assembly and the governor explaining the status of the government's and business' ability to respond to and clean up all past and future petroleum spills.

SECTION 31. Fund appropriations. Money in the fund is continuously appropriated to the administrator for the purpose of making reimbursements under this Act.

SECTION 32. APPROPRIATION. There is hereby appropriated out of any moneys in the petroleum release compensation fund in the state treasury generated from the registration fees collected under section 21 of this Act, not otherwise appropriated, the sum of \$54,000, or so much thereof as may be necessary, to the administrator for the purpose of administering the fund for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 33. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 342

SENATE BILL NO. 2093
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

INSURANCE LAW VIOLATION ADMINISTRATIVE PENALTY

AN ACT to amend and reenact section 26.1-01-03.1 of the North Dakota Century Code, relating to general penalties for violation of provisions of the insurance title.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-01-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-01-03.1. Cease and desist authority - Hearing - Failure to appear. The commissioner may issue an order to cease and desist when it appears that any person is engaged in an act or practice which violates or may lead to a violation of this title. The commissioner shall provide written notice to the person named in the order stating the time and place of the hearing on the matter and setting forth the alleged violation. A hearing must be held not later than ten days after the issuance of the order unless a delay is requested by all persons named in the order. The commissioner shall, within thirty days after the issuance of the cease and desist order, issue an order vacating the cease and desist order or making the cease and desist order permanent, as the facts require. The failure of any named person to appear at any proper hearing under this section after receiving notice of the hearing will cause that person to be in default and the allegations contained in the cease and desist order may be deemed to be true and may be used against the person at the hearing. If no civil monetary penalty is otherwise provided by law, the offender is, after hearing by the commissioner, subject to payment of an administrative monetary penalty of up to ten thousand dollars.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 343

SENATE BILL NO. 2129
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

INSURANCE COMMISSIONER FEES

AN ACT to amend and reenact section 26.1-01-07 and subsection 1 of section 26.1-01-07.1 of the North Dakota Century Code, relating to fees charged by the commissioner of insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-01-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-01-07. Fees chargeable by commissioner. The commissioner shall charge and collect the following fees:

1. For filing articles of incorporation, or copies, or amendments thereof, twenty-five dollars.
2. For each original certificate of authority issued upon admittance, one hundred dollars and for renewal of certificate of authority, amendment to certificate of authority, or certified copy thereof, fifty dollars.
3. For issuing an annual reciprocal exchange license, the same fees as those applicable to the issuance of a certificate of authority in subsection 2.
4. For filing an annual report of a fraternal benefit society, and issuing a license or permit to the society, and for each renewal thereof, twenty-five dollars.
5. For filing bylaws or amendments thereof, ten dollars.
6. For filing of articles of merger, or copies thereof, thirty dollars.
7. For receiving the service of process as attorney, whether the commissioner is served with the process or admits service thereon, ten dollars.
8. For filing of power of attorney by nonadmitted insurer for conduct of business in compliance with surplus lines laws of this state, ten dollars.
9. For filing an annual statement, twenty-five dollars.

10. For each abstract of the annual statement of an insurance company for publication, ten dollars.
11. For an official examination, the expenses of the examination at the rate adopted by the department. The rates must be reasonably related to the direct and indirect costs of the examination, including but not limited to, actual travel expenses, including hotel and other living expenses, compensation of the examiner and other persons making the examination, and necessary attendant administrative costs of the department directly related to the examination and must be paid by the examined insurer together with compensation upon presentation by the department to the insurer of a detailed account of the charges and expenses after a detailed statement has been filed by the examiner and approved by the department.
12. For issuing a certificate to a domestic insurance company showing a compliance with the compulsory reserve provisions of this title and the maintenance of proper security deposits, and for any renewal of the certificate, ten dollars.
13. For a written licensee's examination administered by the office of the commissioner, with the examination not to exceed two lines of insurance at any one sitting, twenty dollars.
14. For a written licensee's examination not administered by the office of the commissioner under a contract with a testing service, the actual cost of the examination, subject to approval of the commissioner, which shall be paid to the testing service.
15. For issuing and each annual renewal of a resident insurance broker's, surplus lines insurance broker's and insurance consultant's license, or duplicate thereof, ten dollars.
16. For issuing and each annual renewal of a nonresident insurance broker's, surplus lines insurance broker's and insurance consultant's license, or duplicate thereof, fifteen dollars.
17. For issuing a license for a resident agent or limited insurance representative of a foreign insurance company, or duplicate, ten dollars.
18. For issuing a nonresident insurance agent's or limited insurance representative's license, or duplicate, ten dollars.
19. For issuing a license for an agent or limited insurance representative of a domestic insurance company, county mutual insurance company, fraternal benefit society, or any other society, or duplicate, ten dollars.
20. For issuing and each annual renewal of a license to a resident agent for the attorney for a reciprocal exchange, ten dollars.
21. For filing of any miscellaneous documents or papers, including documents of admission and those filed annually upon license renewal, ten dollars each.

22. For a copy of any paper filed in the commissioner's office, twenty cents per folio.
23. For affixing the commissioner's official seal on a copy of any paper filed in the office and certifying the copy, ten dollars.
24. For each insurance company appointment and renewal of an appointment of an insurance agent or limited insurance representative, ten dollars.
25. For each company application for admission, five hundred dollars, except applications for admission for county mutual, fraternal benefit, and surplus lines companies must be one hundred dollars.

Nonprofit health service corporations and health maintenance organizations are subject to the same fees as any other insurance company. County mutual insurance companies and benevolent societies are liable only for the fees mentioned in subsections 2, 10, 11, 13, 19, 22, 23, and 24.

However, the commissioner may, after public notice and hearing, increase the fees authorized by this section for any year if it is determined necessary to generate the revenue appropriated by the legislative assembly from the insurance regulatory trust fund to fund budgeted operations for the insurance department. The insurance commissioner may not implement a fee increase pursuant to this section to enhance or in any manner add funds to the legislative appropriation for the insurance department.

SECTION 2. AMENDMENT. Subsection 1 of section 26.1-01-07.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. There is hereby created a trust fund designated "insurance regulatory trust fund". The following amounts must be deposited in the insurance regulatory trust fund:
 - a. All sums received under section 26.1-01-07.
 - b. All sums received under section 26.1-01-07.2 from the insurance regulatory trust fund investments.
 - c. All retaliatory fees imposed upon persons by the insurance department as authorized by law.
 - d. All administrative penalties, fines, and fees collected by the commissioner from any person subject to this title.
 - e. Any other amounts provided by legislative appropriation.

Approved April 11, 1989
Filed April 12, 1989

CHAPTER 344

SENATE BILL NO. 2287
(Senator Richard)
(Representatives Wald, Whalen)

INSURANCE PREMIUM FINANCE COMPANIES

AN ACT to create and enact two new subsections to section 26.1-01-07 and a new chapter to title 26.1 of the North Dakota Century Code, relating to insurance premium finance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 26.1-01-07 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

For issuing a license and each annual renewal of a license to an insurance premium finance company, one hundred dollars.

For examining or investigating an insurance premium finance company, the actual expense and per diem incurred; but the per diem charge may not exceed fifty dollars.

SECTION 2. A new chapter to title 26.1 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Insurance premium finance company" means a person engaged in the business of entering into or acquiring insurance premium finance agreements.
2. "Licensee" means a person holding a license issued under this chapter.
3. "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance policy together with a finance charge. The term does not include an agreement to finance premiums where a life or disability insurance policy is made the security or collateral for the repayment of a debt.

License required - Renewal - Application.

1. No person may finance insurance premiums in this state without a license issued by the commissioner. Licenses may be renewed each year upon payment of the required fee.

2. The commissioner shall issue or renew a license if the commissioner finds that the person to be licensed:
 - a. Is competent and trustworthy and intends to act in good faith in the financing of insurance premiums;
 - b. Has a good business reputation and has had experience, training, or education qualifying the person to finance insurance premiums; and
 - c. If a corporation, is incorporated under the laws of this state or is a foreign corporation authorized to transact business in this state.
3. This chapter does not apply to resident insurance agents; insurers who finance their own premiums; banks; savings and loan associations; credit unions; annuity, safe deposit, and trust companies; subsidiary trust companies; small loan companies; licensed money brokers; or other financial institutions licensed to do business in this state.

License suspension, revocation, or refusal - Grounds. The commissioner may, after notice to the licensee and a hearing, suspend, revoke, or refuse to continue or refuse to issue any license issued under this chapter if the commissioner finds any of the following conditions:

1. The licensee acquired or attempted to acquire a license through misrepresentation or fraud.
2. The licensee, in the conduct of affairs under the license, used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.
3. An officer, employee, stockholder, or partner of an applicant, who may materially influence the applicant's conduct, does not meet the standards required by this chapter.
4. The licensee violated or did not comply with this chapter or a lawful rule or order of the commissioner.

Interrogatories. A person who applies for a license or the renewal of a license shall file sworn answers to interrogatories if requested by the commissioner. The commissioner may, at any time, require the applicant to fully disclose the identity of all stockholders, partners, officers, and employees.

Books and records. Every licensee shall maintain books and records, satisfactory to the commissioner, of the licensee's premium finance agreements. The records must be maintained for a period of three years after making the final entry with respect to a premium finance agreement. The records may be preserved in photographic form. The records must be available for inspection by the commissioner during ordinary business hours. The commissioner may require any licensee to bring the licensee's records to the commissioner's office for examination.

Contents of insurance premium finance agreement.

1. A premium finance agreement must:
 - a. Be dated and signed by or on behalf of the insured, and the printed portion of the agreement must be in at least eight-point type;
 - b. Contain the name and place of business of the insurance agent or insurance broker negotiating the related insurance policy, the name and residence or the place of business of the insured as specified by the insured, the name and place of business of the insurance premium finance company to which installments or other payments are to be made, a description of the insurance policies financed including the term and type of policy; and
 - c. Include the following items:
 - (1) The total amount of the premiums.
 - (2) The amount of the down payment.
 - (3) The amount financed, which is the difference between paragraphs 1 and 2.
 - (4) The amount of the finance charge and the flat service fee, if any.
 - (5) The total of the payments, which is the sum of paragraphs 3 and 4.
 - (6) The number of installments.
2. If additional or subsequent premiums are proposed to be added to an existing premium finance agreement by an insured resulting from additional premiums required under policies presently being financed, from a renewal of a policy, or from other policies owned or purchased by the insured, the premium finance company shall provide the insured with the proposed revisions to the items in subdivision c of subsection 1 in writing along with a written invoice or copy of the invoice received from the insurer or licensed resident agent which describes the additional premium proposed to be added to the original contract. The insured shall affirm the proposed revisions by paying the revised installment or may disaffirm the add-on revisions by continuing to make the payment called for in the original contract. The premium finance company may not charge a higher annual percentage rate of interest for the additional amount than that charged in the original premium finance agreement.

Maximum finance charge.

1. No insurance premium finance company may charge, contract for, receive, or collect a finance charge plus a flat service fee with respect to a premium finance agreement other than as permitted by this section.
2. The finance charge must be computed on the premiums due after subtracting the down payment made by the insured in accordance with

the premium finance agreement, from the effective date of the insurance coverage for which the premiums are being advanced, to and including the date when the final installment under the premium finance agreement is payable.

3. The annual percentage rate charged under a premium finance agreement made to finance an insurance policy for agricultural, personal, family, or household use may not exceed the annual percentage rate permitted under section 47-14-09. In addition, an insurance premium finance company may contract for a flat rate service or application fee not exceeding the greater of one percent of the amount financed or twenty dollars per premium finance agreement for expenses incurred in servicing the loan. The finance rate and flat rate service or application fee charged under a premium finance agreement made to finance an insurance policy for business, corporate, or other purposes may be agreed to by the parties to the agreement.
4. The finance charge must be computed in advance on the principal balance of a premium finance agreement according to the actuarial method on terms payable in substantially equal successive monthly installments.
5. Notwithstanding the provisions of any premium finance agreement, any insured may prepay the obligation in full at any time. If the insured prepays the obligation, the insured must receive a refund credit if the amount of the refund is one dollar or more. The amount of the refund credit must represent at least as great a proportion of the finance charge as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of installments in the agreement. If, in addition to the finance charge, an additional flat service fee was imposed, the flat service fee need not be refunded nor taken into consideration in computing the refund credit.

Delinquency and cancellation charges. A premium finance agreement may provide for the payment by the insured of a delinquency charge for any payment that is in default for a period of ten days or more. The amount of the delinquency charge may not exceed five dollars. If the default results in the cancellation of any insurance policy listed in the premium finance agreement, the premium finance agreement may provide for a cancellation charge of ten dollars in addition to the delinquency charge.

Cancellation of insurance contract upon default. If a premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance policy listed in the premium finance agreement, an insurance policy may be canceled by the insurance premium finance company as follows:

1. The insurance premium finance company shall mail to the insured and to the insurance agent or insurance broker indicated on the premium finance agreement at least ten days' written notice of the insurance premium finance company's intent to cancel the insurance policy unless the default is cured prior to the date stated in the notice. If the default is not cured by the date specified in the notice, the insurance premium finance company may cancel on behalf

of the insured by mailing to the insurer written notice of the cancellation. The insurance policy must be canceled as if the notice of cancellation had been submitted by the insured, but without requiring the return of the insurance policy. The notice may be mailed by the insurance premium finance company to the insurer at the address on the premium finance agreement or on file with the commissioner. The insurance premium finance company shall also mail a notice of cancellation to the insured at the insured's last known address and to the insurance agent or insurance broker indicated on the premium finance agreement.

2. Where statutory, regulatory, or contractual restrictions provide that an insurance policy may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party, the insurer shall give the prescribed notice on behalf of itself or the insured to the governmental agency, mortgagee, or other third party within a reasonable time after the insurer receives the notice of cancellation from the insurance premium finance company. The insurance policy must be continued beyond the date of cancellation requested by the premium finance company until the date specified by the insurance company in the prescribed notice.

Application of unearned premiums.

1. Whenever a financed insurance policy or assigned risk policy is canceled, the insurer shall return whatever gross unearned premiums, computed on a pro rata basis, are due under the insurance policy or assigned risk policy to the insurance premium finance company for the account of the insured. The unearned premiums must be returned within thirty days after the date of cancellation. This action by the insurer satisfies the insurer's obligation under the insurance policy or assigned risk policy to return unearned premiums.
2. If a premium is subject to an audit to determine the final premium amount, the gross unearned premium must be calculated upon the premium deposited and the insurer shall return whatever gross unearned premiums are due based upon the deposit rather than the actual unearned premium to the insurance premium finance company for the account of the insured or insureds.
3. If the crediting of returned premiums to the account of the insured results in a surplus over the amount due from the insured, the insurance premium finance company must refund any amount of one dollar or more to the insured within thirty days after receipt of the returned premium.

Exemption from filing. No filing or recording of an insurance premium finance agreement is necessary to perfect the validity of the agreement as a secured transaction against creditors, subsequent purchasers, pledgees, encumbrances, successors, or assigns.

Application to premium finance agreements. This chapter applies to premium finance agreements and amendments to existing premium finance agreements executed after the effective date of this Act.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 345

HOUSE BILL NO. 1448
(Stenehjem, D. Larson)

INSURANCE PREMIUM TAX DUE DATE

AN ACT to amend and reenact subsection 1 of section 26.1-03-17 of the North Dakota Century Code, relating to the payment of insurance company premium taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 26.1-03-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and one-fourth percent with respect to accident and health insurance, and one and one-fourth percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable and must be deposited in the general fund in the state treasury. If the due date falls on a Saturday or legal holiday, the tax is payable on the next succeeding business day.

Approved March 22, 1989
Filed March 23, 1989

- * NOTE: Subsection 1 of section 26.1-03-17 was also amended by section 1 of House Bill No. 1029, chapter 346, and section 3 of Senate Bill No. 2436, chapter 261.

CHAPTER 346

HOUSE BILL NO. 1029
(Committee on Finance and Taxation)
(At the request of the Office of Management and Budget)

INSURANCE PREMIUM TAX RATE

AN ACT to amend and reenact subsections 1 and 2 of section 26.1-03-17 of the North Dakota Century Code, relating to the rate of insurance premium tax on accident and health insurance and other lines of insurance; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsections 1 and 2 of section 26.1-03-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Before issuing the annual certificate required by law, the commissioner shall collect from every stock and mutual insurance company, nonprofit health service corporation, health maintenance organization, and prepaid legal service organization, except a fraternal benefit society, doing business in this state, a tax on the gross amount of premiums, assessments, membership fees, subscriber fees, policy fees, service fees collected by any third party administrator providing administrative services to a group that is self-insured for health care benefits, and finance and service charges received in this state during the preceding calendar year, at the rate of two percent with respect to life insurance, one and ~~one-fourth~~ three-fourths percent with respect to accident and health insurance, and one and ~~one-fourth~~ three-fourths percent with respect to all other lines of insurance. This tax does not apply to considerations for annuities. The total tax is payable on or before March first following the year for which the tax is assessable and must be deposited in the general fund in the state treasury.
2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection 4 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit as provided under subsection 1 of section 26.1-38-08, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, ~~and~~ 26.1-03-19 through 26.1-03-22, 26.1-17-32, and 26.1-18-27 and a credit against the tax due for an amount equal to the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of

* NOTE: Subsection 1 of section 26.1-03-17 was also amended by section 3 of Senate Bill No. 2436, chapter 261, and section 1 of House Bill No. 1448, chapter 345.

the year for which the tax is paid. The credits under this subsection must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 347

SENATE BILL NO. 2491
(Lips)

INSURANCE COMPANY EXAMINATIONS

AN ACT to amend and reenact section 26.1-03-20 of the North Dakota Century Code, relating to the examination of insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-03-20 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-03-20. Examinations - By whom conducted - Compensation to be paid into state treasury insurance regulatory trust fund. Qualified regular employees of the commissioner, or the commissioner's designated representatives acting as independent contract examiners under the direction of regular employees of the commissioner, shall conduct all examinations of an insurance company required or permitted by law to be conducted by the commissioner, whether or not the examinations are convention examinations called in accordance with rules promulgated by the national association of insurance commissioners. Their compensation is to be paid out of the appropriation for the commissioner's office. Any sums paid to the employees or to the commissioner by the company examined, as an examination fee or otherwise, is state money, and forthwith shall be paid into the insurance regulatory trust fund. Any sums paid to the employee or the commissioner as expense money for the examiner may be paid directly to the employee, and no employee may charge or collect from the state any expenses incurred in connection with any examination for or during which expenses or any part thereof have been paid by any other person, firm, or corporation. However, independent contract examiners must be paid directly by the company examined after approval by the commissioner. The commissioner may contract for and procure the services of financial and market conduct examiners and other or additional specialized technical or professional assistants, as independent contractors. None of the persons providing those services or assistance on a contract or fee basis may be in the classified service of the state.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 348

HOUSE BILL NO. 1275
(Martinson, V. Olson)

NURSING HOME INSURANCE PRACTICES

AN ACT to amend and reenact subdivision 1 of subsection 9 of section 26.1-04-03 of the North Dakota Century Code, relating to unfair insurance claim settlement practices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision 1 of subsection 9 of section 26.1-04-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Providing coverage under a policy issued under chapter 26.1-45 or as defined in section 26.1-36-31 for confinement to a nursing home and refusing to pay a claim when a person is covered by such a policy ~~was confined to a hospital for three days or more~~ and the person's physician ordered confinement pursuant to the terms of the policy for care other than custodial care. Custodial care means care which is primarily for the purpose of meeting personal needs without supervision by a registered nurse or a licensed practical nurse.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 349

HOUSE BILL NO. 1142
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

INSURANCE COMPANY SOLVENCY AND RESIDENCY

AN ACT to amend and reenact sections 26.1-05-04, 26.1-12-10, and 26.1-18-23 of the North Dakota Century Code, relating to solvency requirements for stock insurance companies, incorporated mutual insurance companies, and health maintenance organizations; and to repeal section 26.1-05-05 of the North Dakota Century Code, relating to residence requirements of directors and executive officers of domestic insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-05-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-05-04. Capital stock and surplus requirements of domestic stock company - Exceptions. A stock insurance company may not be incorporated under this chapter unless it has an authorized capital stock of at least five hundred thousand dollars and a surplus of at least five hundred thousand dollars. A domestic stock insurance company may not issue any insurance policy until at least fifty percent of the required capital stock, and all of the required surplus, has been paid in, the residue of capital stock to be paid in within twelve months from the time of filing the articles of incorporation. The commissioner, for good cause shown, may extend the time of payment of the residue for the further period of one year. If the minimum capital stock and surplus requirements at the time a stock insurance company incorporated under this chapter were less than the minimum requirements provided by this section, the stock insurance company must maintain increase its authorized capital stock and surplus which satisfies the capital stock and surplus requirements in effect at that time to a minimum of two hundred fifty thousand dollars. Except as otherwise provided in this section, the total value of paid-in capital stock and surplus of a stock insurance company organized under the laws of this state may not at any time be depleted to an amount totaling less than one million dollars.

SECTION 2. AMENDMENT. Section 26.1-12-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-12-10. Mutual life company - Amount of subscribed insurance required - Surplus required. A mutual life insurance company may not issue a policy until not less than two hundred thousand dollars of insurance in not less than two hundred separate risks have been subscribed for and entered on its books. The commissioner may not issue a certificate of authority for the transaction of business to the company unless it has a surplus of assets over all liabilities of at least one million dollars. A domestic mutual life

insurance company must maintain surplus of at least this amount. If the minimum asset and surplus requirements required by this section are more than the minimum requirements required at the time a company was issued its original certificate of authority, the company must maintain increase its assets and surplus which satisfy the assets and surplus requirements in effect at that time to a minimum of one hundred thousand dollars.

SECTION 3. AMENDMENT. Section 26.1-18-23 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-18-23. Protection Protections against insolvency — Deposit of bond, cash, or securities and deposit. A health maintenance organization must furnish a surety bond in an amount satisfactory to the commissioner or deposit with the commissioner cash or securities acceptable to the commissioner in at least the same amount, as a guarantee that the obligations to the enrollees will be performed. The commissioner may waive this requirement whenever satisfied that the assets of the organization or its contracts with insurers, health service corporations, governments, or other organizations are such as to reasonably assure the performance of its obligations.

1. Unless otherwise provided in this section, each health maintenance organization shall deposit with the commissioner, or with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that is acceptable to the commissioner in the amount set forth in this section.

The amount for an organization that is beginning operation is the greater of one hundred thousand dollars or one percent of the amount it expects to collect as premium, subscriber, or enrollee fees from members.

At the beginning of the second fiscal year of operation, the amount of the deposit must equal the greater of one hundred thousand dollars or two percent of the amount it collects as premium, subscriber, or enrollee fees from members.

At the beginning of the third fiscal year of operation, the amount of deposit must equal the greater of one hundred thousand dollars or three percent of the amount it collects as premium, subscriber, or enrollee fees from members.

At the beginning of the fourth fiscal year of operation, the amount of deposit must equal the greater of one hundred thousand dollars or four percent of the amount it collects as premium, subscriber, or enrollee fees from members.

2. The commissioner may waive all or any part of the deposit requirements in this section if the commissioner is satisfied that the organization has sufficient net worth and an adequate history of generating net income to assure its financial viability for the next year, or its performance and obligations are guaranteed by an organization with sufficient net worth and an adequate history of generating net income, or the assets of the organization or its

- contracts with insurers, hospital or medical service corporations, governments, or other organizations are reasonably sufficient to assure the performance of its obligations.
3. When an organization has achieved a net worth not including land, buildings, and equipment of at least one million dollars or has achieved a net worth including organization-related land, buildings, and equipment of at least five million dollars, the annual deposit requirement does not apply.
 4. All income from deposits belongs to the depositing organization and must be paid to it as it becomes available. A health maintenance organization that has made a securities deposit may withdraw all or part of that deposit after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities must be approved by the commissioner before being substituted.
 5. Each health maintenance organization that obtains a certificate of authority after the effective date of this Act shall have and maintain a capital account, if a stock company, of at least five hundred thousand dollars in addition to any deposit requirements under this section. The capital account must be net of any accrued liabilities and be in the form of cash, securities, or any combination of these or other measures acceptable to the commissioner.
 6. Each health maintenance organization existing within the state as of July 1, 1989, shall deposit with the commissioner, or with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that is acceptable to the commissioner in the amount of one hundred thousand dollars. Each existing health maintenance organization must meet the maximum deposit requirements set forth in subsections 1 through 4 by July 1, 1990, unless the commissioner grants an extension to a date no later than July 1, 1992. Additionally, each existing stock health maintenance organization shall meet the capital account requirements of subsection 5 by July 1, 1990, unless the commissioner grants an extension to a date no later than July 1, 1992.

SECTION 4. REPEAL. Section 26.1-05-05 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 350

SENATE BILL NO. 2282
(Lips)

INSURANCE COMPANY INVESTMENTS

AN ACT to create and enact two new subsections to section 26.1-05-19 of the North Dakota Century Code, relating to hydrocarbon production and royalty loans and collateral loans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 26.1-05-19 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Ownership of, or loans secured by first liens upon:

- a. Production payments or interests therein payable from oil, gas, other hydrocarbons, or other minerals in producing properties located in areas of established and continuing production within the United States or the adjacent continental shelf areas, which production payments are dischargeable from property interests appraised by independent petroleum engineers at the time of the acquisition or loan, based on current market prices, to have a current market value of at least one hundred fifty percent of the purchase price of, or the amount loaned upon the security of, such production payments. The term "production payments" means rights to oil, gas, other hydrocarbons, or other minerals in place or as produced which entitle the owner thereof to a specified fraction or percentage of production or the proceeds thereof, until a specified or determinable sum of money has been received, and which have investment qualities and characteristics in which the speculative elements are not predominant;
- b. Royalty interests, overriding royalty interests, net profit interests, leasehold interests, working interests or other interests or rights in oil, gas, other hydrocarbons, or other minerals in place or as produce, which interests or rights may be subject to production payments of the nature described in subdivision a.

No domestic insurance company may invest more than five percent of its admitted assets in the ownership of such interests or rights. In determining the amount invested in such interests or rights at any given time, each insurance company may evaluate such interests or rights in such manner as will permit it to amortize the interests or rights over a period of time during which not more than seventy-five percent of the dollar value of the recoverable production accruing to such interests or rights will be produced,

as determined by independent petroleum engineers at the time of investment.

Obligations secured by a pledge of personal property, as follows:

- a. Tangible personal property, or equipment trust certificates or other instruments evidencing an interest in or debt secured by tangible personal property, if there is a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such tangible personal property.
- b. Bonds, notes, or other evidences of indebtedness secured wholly or partially by tangible personal property, provided that at the date of acquisition the amount of such indebtedness does not exceed sixty-six and two-thirds percent of the value of such tangible personal property.

The aggregate outstanding investment made under subsections a and b may not exceed five percent of the admitted assets of the life insurance company.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 351

SENATE BILL NO. 2299
(Lips)

FINANCIAL FUTURES CONTRACT OPTIONS

AN ACT to create and enact a new section to chapter 26.1-05 of the North Dakota Century Code, relating to call options and financial futures contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Call options - Financial futures contracts. The purchase and sale of put options or call options or financial futures contracts are subject to this section.

1. As used in this section:

- a. "Call option" means an exchange-traded option contract under which the holder has the right to buy, or to make a cash settlement in lieu of buying, a fixed number of shares of stock, a fixed amount of an underlying security, or an index of underlying securities at a stated price on or before a fixed expiration date.
- b. "Commodity futures trading commission" means the trading regulatory agency charged and empowered under the Commodity Futures Trading Commission Act of 1974, as amended, with the regulation of futures trading in commodities.
- c. "Financial futures contract" means an exchange-traded agreement, to make or take delivery of, or to make cash settlement in lieu of delivery of, a fixed amount of an underlying security, or an index of underlying securities, on a specified date or during a specified period of time, or a call or put option on such an agreement, made through a registered futures commission merchant on a board of trade that has been designated by the commodity futures trading commission as a contract market. "Financial futures contract" includes a contract involving United States treasury bills, bonds, or notes; securities or pools of securities issued by the government national mortgage association; bank certificates of deposit; standard and poor's 500 stock price index; New York stock exchange composite index; or any other agreement that has been approved by and which is governed by the rules and regulations of the commodity futures trading commission and the respective contract markets on which such financial futures contracts are traded.

- d. "Margin" means any type of deposit or settlement made or required to be made with a futures commission merchant, clearinghouse, or safekeeping agent to ensure performance of the terms of the financial futures contract. For the purposes of this section, "margin" includes initial, maintenance, and variation margins as those terms are commonly and customarily employed in the futures industry.
 - e. "Put option" means an exchange-traded option contract under which the holder has the right to sell, or to make a cash settlement in lieu of sale of, a fixed number of shares of stock, fixed amount of an underlying security, or an index of underlying securities at a stated price on or before a fixed expiration date.
 - f. "Securities and exchange commission" means the federal regulatory agency charged and empowered under the Securities Exchange Act of 1934, as amended, with the regulation of trading in securities.
 - g. "Underlying security" means the security subject to being purchased or sold upon exercise of a call option or put option, or the security subject to delivery under a financial futures contract.
2. The purchase and sale of put options or call options may take place under the following conditions:
- a. An insurance company may purchase put options or sell call options with regard to underlying securities owned by the insurance company, underlying securities that the insurance company may reasonably expect to obtain through exercise of warrants or conversion rights owned by the insurance company at the time the put option is purchased or the call option is sold, or to reduce the economic risk associated with an insurance company asset or liability, group of such assets or liabilities, or assets, liabilities or groups of assets or liabilities reasonably expected to be acquired or incurred by the insurance company in the normal course of business. Such assets or liabilities must be subject to an economic risk, such as changing interest rates or prices.
 - b. An insurance company may sell put options or purchase call options to reduce the economic risk associated with an insurance company asset or liability group of such assets or liabilities, or assets, liabilities or groups of assets or liabilities reasonably expected to be acquired or incurred by the insurance company in the normal course of business, or to offset obligations and rights of the insurance company under other options held by the insurance company pertaining to the same underlying securities, or index of underlying securities.
 - c. An insurance company may purchase or sell put options or call options only on underlying securities, or an index of underlying securities, which are eligible for investment by a life insurance company under the laws of this state.

- d. An insurance company may purchase or sell put or call options only through an exchange that is registered with the securities and exchange commission as a national securities exchange pursuant to the provisions of the Securities Exchange Act of 1934, as amended.
 - e. An insurance company may not purchase call options or sell put options, if the purchase or sale could result in the acquisition of an amount of underlying securities which, when aggregated with current holdings, exceeds applicable limitations imposed under the laws of this state for investment in those particular underlying securities.
 - f. The net amount of premiums paid for all option contracts purchased minus the premiums received for all option contracts sold, plus the net amount of financial futures contracts purchased minus financial futures contracts sold, may not at any time exceed in the aggregate five percent of the insurance company's admitted assets.
3. The purchase and sale of financial futures contracts may take place under the following conditions:
- a. An insurance company may purchase or sell financial futures contracts for the purpose of hedging against the economic risk associated with an insurance company asset or liability, group of such assets or liabilities, or assets, liabilities or groups of assets or liabilities reasonably expected to be acquired or incurred by the insurance company in its normal course of business. Such assets or liabilities must be subject to an economic risk, such as changing interest rates or prices.
 - b. An insurance company may not purchase or sell financial futures contracts or options on such contracts, if the purchase or sale could result in the acquisition of an amount of underlying securities which, when aggregated with current holdings, exceeds applicable limitations imposed under laws of this state for investment in those particular underlying securities.
 - c. The net amount of financial futures contracts purchased minus financial futures contracts sold, plus the net amount of premiums paid for all option contracts purchased minus the premiums received for all option contracts sold, may not at any time exceed in the aggregate five percent of the insurance company's admitted assets. For the purposes of transactions in financial futures contracts, the admitted assets limitation is calculated by taking the net asset value of the property used to margin the financial futures contract positions, plus option premiums paid on financial futures contracts, less option premiums received on financial futures contracts.
4. This section may not be utilized by a domestic insurance company without the prior approval of the commissioner.

Approved March 28, 1989

Filed March 28, 1989

CHAPTER 352

HOUSE BILL NO. 1343
(R. Larson)

HEALTH SERVICE NOT INSURANCE COMPANY

AN ACT to amend and reenact subsection 6 of section 26.1-08-01 of the North Dakota Century Code, relating to the definition of an insurance company for purposes of the comprehensive health association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 26.1-08-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Insurance company" means a company or organization operating pursuant to chapter 26.1-17, 26.1-18, or 26.1-36, and offering or selling accident and health insurance policies or health care or health service contracts. The term does not include a health service corporation operating under chapter 26.1-17 which does not write hospital or medical service contracts.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 353

SENATE BILL NO. 2062
(Legislative Council)
(Interim Legislative Audit and Fiscal Review Committee)

COMPREHENSIVE HEALTH ASSOCIATION DIRECTORS
AND COVERAGE

AN ACT to create and enact a new subdivision to subsection 6 of section 26.1-08-03 of the North Dakota Century Code, relating to the powers of the comprehensive health association board of directors; and to amend and reenact subsection 2 of section 26.1-08-03, sections 26.1-08-04, 26.1-08-05, 26.1-08-06, 26.1-08-07, and subsection 4 of section 26.1-08-12 of the North Dakota Century Code, relating to the comprehensive health association's board of directors and benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 26.1-08-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The board of directors of the association must consist of ~~ten individuals,~~ the commissioner of insurance, the state health officer, the director of the office of management and budget, one senator appointed by the president of the senate of the legislative assembly, one representative appointed by the speaker of the house of representatives of the legislative assembly, and one individual from each of the ~~ten~~ three participating member insurance companies of the association with the highest annual premium volumes of accident and health insurance contracts as determined in subsection 1. ~~Each board member is entitled to votes, in person or by proxy, based on the member's annual premium volume of accident and health insurance contracts as determined in subsection 1, in accordance with the following schedule:~~

\$ 100,000	- 4,999,999	1 vote
\$ 5,000,000	- 9,999,999	2 votes
\$10,000,000	- 14,999,999	3 votes
\$15,000,000 or more		4 votes

Members of the board may be reimbursed from the moneys of the association for expenses incurred by them due to their service as board members, but may not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and its board of directors must be borne by participating members of the association in accordance with subsection 4 of section 26.1-08-09.

SECTION 2. A new subdivision to subsection 6 of section 26.1-08-03 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Exempt, by a two-thirds majority vote, an applicant from the provisions of subsection 4 of section 26.1-08-12 when required under emergency circumstances to allow the applicant access to medical procedures determined to be necessary to preserve life.

SECTION 3. AMENDMENT. Section 26.1-08-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-08-04. Minimum benefits of association plan. The association through its plan ~~must shall~~ offer policies ~~which that~~ provide at least the benefits of a number one, and two, ~~and three~~ qualified plan A and qualified plan B and a qualified medicare extended plan.

SECTION 4. AMENDMENT. Section 26.1-08-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-08-05. Minimum benefits of a qualified plan A.

1. A plan of health coverage is a number ~~three~~ two qualified plan A if it otherwise meets the requirements established by chapter 26.1-36, and other laws of the state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:
 - a. The minimum benefits for covered individuals must, subject to this subdivision, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which ~~does must not exceed one~~ be less than five hundred fifty dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.
 - b. Covered expenses must be the usual and customary charges for the following services and articles when prescribed by a physician:
 - (1) Hospital services.
 - (2) Professional services for the diagnosis or treatment of injuries, illness, or conditions, other than outpatient mental or dental, which are rendered by a physician or at a physician's direction.
 - (3) Use of radium or other radioactive materials.
 - (4) Oxygen.
 - (5) Anesthetics.
 - (6) Diagnostic X-rays and laboratory tests.
 - (7) Services of a physical therapist.

- (8) Transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.
- c. Covered expenses must include, at the option of the eligible person, the usual and customary charges for professional services rendered by a chiropractor and for services and articles prescribed by a chiropractor for which an additional premium may be charged.
- d. Covered expenses for the services or articles specified in this subsection do not include:
 - (1) Drugs requiring a physician's prescription.
 - (2) Services of a nursing home.
 - (3) Services of a home health agency.
 - (4) Home and office calls.
 - (5) Prostheses.
 - (6) Rental or purchase of durable medical equipment.
 - (7) The first twenty dollars of diagnostic X-ray and laboratory charges in each fourteen-day period.
 - (8) Oral surgery.
 - (9) Any charge for any care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable without regard to fault under coverage statutorily required to be contained in any motor vehicle or other liability insurance policy or equivalent to self-insurance, or for which benefits are payable under another accident and health insurance policy or medicare.
 - (10) Any charge for treatment for cosmetic purposes other than for surgery for the repair of an injury or birth defect.
 - (11) Any charge for travel other than transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.
 - (12) Any charge for confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician.
 - (13) That part of a charge for services or articles rendered or prescribed by a physician, dentist, chiropractor, or other health care personnel which exceeds the prevailing charge in the locality where the service is provided.

- (14) Any charge for services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles.
 - (15) Care which is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.
 - (16) Any charge for organ transplants unless prior approval is received from the board of directors of the comprehensive health association.
2. A plan of coverage is a number two qualified plan A if it meets the requirements established by the laws of this state and provides for payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which does not exceed five hundred dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.
3. A plan of health coverage is a number one qualified plan A if it meets the requirements established by the laws of this state and provides for the payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which ~~does~~ must not exceed ~~be less than~~ one thousand dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.

SECTION 5. AMENDMENT. Section 26.1-08-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-08-06. Minimum benefits of a qualified plan B.

1. A plan of health coverage is a number ~~three~~ two qualified plan B if it otherwise meets the requirements established by chapter 26.1-36, and the other laws of the state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:
- a. The minimum benefits for covered individuals must, subject to this subdivision, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which ~~does~~ must not exceed ~~one~~ ~~be less than~~ five hundred ~~fifty~~ dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. The coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.

- b. Covered expenses must be the usual and customary charges for the following services and articles when prescribed by a physician:
 - (1) Hospital services.
 - (2) Professional services for the diagnosis or treatment of injuries, illness, or conditions, other than outpatient mental or dental, which are rendered by a physician or at a physician's direction.
 - (3) Drugs requiring a physician's prescription.
 - (4) Services of a nursing home for not more than one hundred twenty days in a year if the services commence within fourteen days following confinement of at least three days in a hospital for the same condition.
 - (5) Service of a home health agency up to a maximum of one hundred eighty visits per year.
 - (6) Use of radium or other radioactive materials.
 - (7) Oxygen.
 - (8) Anesthetics.
 - (9) Prostheses.
 - (10) Rental or purchase, as appropriate, of durable medical equipment.
 - (11) Diagnostic X-rays and laboratory tests.
 - (12) Oral surgery for partially or completely unerupted impacted teeth, a tooth root without the extraction of the entire tooth, or the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth.
 - (13) Services of a physical therapist.
 - (14) Transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.
- c. Covered expenses must include, at the option of the eligible person, the usual and customary charges for professional services rendered by a chiropractor and for services and articles prescribed by a chiropractor for which an additional premium may be charged.
- d. Covered expenses for the services or articles specified in this subsection do not include:
 - (1) Any charge for any care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or

similar law, for which benefits are payable without regard to fault under coverage statutorily required to be contained in any motor vehicle or other liability insurance policy or equivalent self-insurance, or for which benefits are payable under another accident and health insurance policy or medicare.

- (2) Any charge for treatment for cosmetic purposes other than surgery for the repair of an injury or birth defect.
 - (3) Any charge for travel other than transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition.
 - (4) Any charge for confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician.
 - (5) That part of any charge for services or articles rendered or prescribed by a physician, dentist, chiropractor, or other health care personnel which exceeds the prevailing charge in the locality where the service is provided.
 - (6) Any charge for services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles.
 - (7) Care which is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.
 - (8) Any charge for organ transplants unless prior approval is received from the board of directors of the comprehensive health association.
2. A plan of health coverage is a number two qualified plan B if it meets the requirements established by the laws of this state and provides for payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which does not exceed five hundred dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.
3. A plan of health coverage is a number one qualified plan B if it meets the requirements established by the laws of this state and provides for the payment of at least eighty percent of the covered expenses required by this section in excess of a deductible which does not exceed one thousand dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under subsection 1. Coverage may be subject to a maximum lifetime benefit of not less than two hundred fifty thousand dollars.

SECTION 6. AMENDMENT. Section 26.1-08-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-08-07. Certification of qualified plans. Upon application by the association or the lead carrier for certification of a plan of health coverage as a qualified plan for the purposes of this chapter, the commissioner shall make a determination within ninety days as to whether the plan is qualified. All plans of health coverage ~~shall~~ must be labeled as "qualified plan A", "qualified plan B", or "nonqualified" on the front of the policy or evidence of insurance. All qualified plans ~~shall~~ must indicate whether they are number one, or two, ~~or three~~ coverage plans.

SECTION 7. AMENDMENT. Subsection 4 of section 26.1-08-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A person who obtains coverage pursuant to this section may not be covered for any preexisting condition during the first six months of coverage under the association plan if the person was diagnosed or treated for that condition during the ninety days immediately preceding the date of the application. This subsection does not apply to a person who has lost dependent status under a parent's or guardian's family or group policy and who has had continuous coverage under an individual, a family, or group policy for the twelve-month period immediately preceding the filing of an application for nonelective procedures or to a person who is treated by nonelective procedures for a congenital or genetic disease.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 354

SENATE BILL NO. 2428
(Senators Tennefos, Freborg, Heinrich)
(Representatives Oban, Kingsbury)

CHIROPRACTIC INSURANCE COVERAGE

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to payment for chiropractic services under contracts issued by health service corporations; and to amend and reenact subsection 9 of section 26.1-17-01 of the North Dakota Century Code, relating to practitioners entitled to contract with health service corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 26.1-17-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Practitioner" includes an optometrist ~~and~~, a physician, or a chiropractor duly licensed to practice his or her profession under North Dakota law.

SECTION 2. A new section to chapter 26.1-36 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Health service corporation contract provision denying insured or subscriber right to employ doctor or enter hospital prohibited. Any provision in any health service contract issued by a health service corporation denying the insured or subscriber, subscriber member, officer, or employee, in case of accident or sickness, the right to consult or employ any doctor, including doctors of chiropractic, licensed to practice in this state whom the insured, subscriber, subscriber member, officer, or employee may choose, or to enter any hospital or sanitarium organized and operating under the laws of this state which the insured, subscriber, subscriber member, officer, or employee may select, is void. The health service corporation must recognize any proof of claim duly certified by the doctor, hospital, or sanitarium notwithstanding any provision contained in the contract.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 355

HOUSE BILL NO. 1370
(Representatives Wald, V. Olson, Mertens)
(Senators Streibel, Axtman, Tallackson)

HMO AND PREFERRED PROVIDER COVERAGE

AN ACT to create and enact a new subsection to section 26.1-18-12 and a new subdivision to subsection 1 of section 26.1-47-03 of the North Dakota Century Code, relating to the provision of health care services under health maintenance organization health care plans and preferred provider arrangements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-18-12 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

An evidence of coverage must contain a provision that entitles the enrollee, if the furnishing of any health care services through providers under contract with or employed by the health maintenance organization is not available within fifty miles [80.47 kilometers] of the certificate holder's legal residence, to coverage for the provision of those health care services under the health care plan by a provider not under contract with or employed by the health maintenance organization and located within fifty miles [80.47 kilometers] of the certificate holder's legal residence. For the enrollee to be eligible for benefits under this subsection, the provider not under contract with or employed by the health maintenance organization must furnish the health care services at the same cost or less that would have been incurred had the enrollee secured the health care services through a provider under contract with or employed by the health maintenance organization.

SECTION 2. A new subdivision to subsection 1 of section 26.1-47-03 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A provision that entitles the covered person, if any health care services covered under the health benefit plan are not available through a preferred provider within fifty miles [80.47 kilometers] of the policyholder's legal residence, to the provision of those covered services under the health benefit plan by a health care provider not under contract with the health care insurer and located within fifty miles [80.47 kilometers] of the policyholder's legal residence. For the covered person to be eligible for benefits under this subdivision, the health care provider not under contract with the health care insurer must furnish the health care services at the same cost or less that would have been incurred had the covered person secured the health care services through a preferred provider.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 356

HOUSE BILL NO. 1073
(Representatives Haugland, Nowatzki)
(Senators O'Connell, Stenehjem)

PEACE GARDEN INSURANCE, BONDING, AND VEHICLES

AN ACT to amend and reenact sections 26.1-21-01, 26.1-22-01, 26.1-22-02, 26.1-22-05, 26.1-22-06, 26.1-22-09, 26.1-22-10, 26.1-22-11, 26.1-22-14, 26.1-22-15, 26.1-22-18, 39-01-02, 39-01-03, subsection 1 of section 39-01-08, and subdivision b of subsection 2 of section 39-04-18 of the North Dakota Century Code, relating to an international peace garden obtaining insurance through the state fire and tornado fund, the bonding of officers and employees of an international peace garden, and the licensing of motor vehicles of any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-21-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-21-01. Definitions. In this chapter, unless the context or ~~subject matter~~ otherwise requires:

1. "Blanket bond" means a bond ~~which~~ that covers collectively all public employees and public officials without the necessity of scheduling names or positions as a part of the bond, and a bond whereby new public employees and new public officials entering employment or office during the period of the bond are automatically included without notice to the fund.
2. "Fund" means the state bonding fund.
3. "International peace garden" means an entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world.
4. "Political subdivision" means a county, city, township, school district or park district, or any other unit of local government.

- ~~4-~~ 5. "Public employee" means any person employed by the state or any of its political subdivisions, an officer or employee eligible under section 57-15-56, and an employee under section 61-16.1-05, and an officer or employee of an international peace garden. "Public employee" does not include a person employed by an occupational and professional board or commission under title 43 or by the state bar association.
- 5- 6. "Public official" means any officer or deputy, either elected or appointed, of the state or any of its political subdivisions who is required to be bonded by any law of this state, except for an officer of an occupational and professional board or commission under title 43 or of the state bar association.
- 6- 7. "State" means state departments, agencies, industries, and institutions, and an international peace garden.

* SECTION 2. AMENDMENT. Section 26.1-22-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Fund" means the state fire and tornado fund.
2. "International peace garden" means an entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world.
3. "Permanent contents" refers only to such public property usually kept or used in or about public buildings insured in the fund, and to all public personal property usually kept or used in or about all buildings used for public purposes, or within one hundred feet [30.48 meters] of all such buildings, or while on sidewalks, streets, alleys, yards, detached platforms, and in or on railway cars. Permanent contents includes similar property owned by an international peace garden or a winter show. Permanent contents does not include automobiles, trucks, tractors, road machinery, or similar property used principally outside of such buildings.
- ~~3-~~ 4. "Political subdivision" includes a county, city, township, school district, or park district of this state.
- ~~4-~~ 5. "Winter show" means an agricultural exhibition sponsored each year in March by a nonprofit corporation.

SECTION 3. AMENDMENT. Section 26.1-22-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-02. State fire and tornado fund under management of commissioner. The commissioner shall manage the fund. The fund shall be

* NOTE: Section 26.1-22-01 was also amended by section 1 of Senate Bill No. 2147, chapter 357.

maintained as a fund to insure the various state industries, the various political subdivisions, any international peace garden, and any winter show against loss to the public buildings, or buildings owned by an international peace garden or a winter show, and fixtures and permanent contents therein, through fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosion, riot attending a strike, aircraft, smoke, vehicles, and at the option of the insured the fund shall have the authority to insure against any other risks of direct physical loss. All moneys collected under this chapter shall be paid into the fund for use only for the purposes provided for in this chapter.

SECTION 4. AMENDMENT. Section 26.1-22-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-05. Public buildings insurable only in fund. The public buildings and fixtures and permanent contents therein belonging to the state, the various state industries, and the political subdivisions must, and the buildings and fixtures and the permanent contents therein belonging to an international peace garden or a winter show, may be insured under this chapter. No officer or agent of the state or of any political subdivision, and no person having charge of any public buildings belonging to the state, any state industry, or any political subdivision, may pay out any public moneys or funds on account of any insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosion, riot attending a strike, aircraft, smoke, vehicles, or any other risks of direct physical loss, or contract in any manner for, or incur any indebtedness against, the state or any political subdivision on account of any such insurance upon any of the buildings or fixtures and permanent contents therein belonging to the state or any political subdivision, except in the manner provided in this chapter.

SECTION 5. AMENDMENT. Section 26.1-22-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-06. Commissioner to adopt guidelines on insurable values for property. The commissioner shall adopt guidelines to be used by state agencies, departments, offices, officers, boards, commissions, international peace gardens, and winter shows for the purpose of determining insurable values of state-owned property and property belonging to an international peace garden or a winter show for insurance coverage as authorized by law.

SECTION 6. AMENDMENT. Section 26.1-22-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-09. Buildings to be reported to commissioner. In each odd-numbered year, or upon application for insurance, the state board of higher education, and each officer, department, or agent of the state and of any industry thereof having in charge any public building belonging to the state, each county auditor, city auditor, township clerk, and school district business manager, as the case may be, the agent for an international peace garden, and the agent for a winter show, if applicable, shall report to the commissioner the insurable value of each public building, or of each building owned by an international peace garden or a winter show with the exception of buildings insured by private insurance companies, and of the fixtures and

permanent contents therein, with the exception of fixtures and permanent contents insured by private insurance companies, belonging to the state, political subdivision, an international peace garden, or a winter show, and shall supply such other information as may be required by the commissioner on forms provided by the commissioner.

*** SECTION 7. AMENDMENT.** Section 26.1-22-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-10. Commissioner to provide insurance on all buildings. Upon application the commissioner shall provide for insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosions, riot attending a strike, aircraft, smoke, vehicles, or any other risks of direct physical loss, all in the manner and subject to the restrictions of the standard fire insurance policy and standard endorsement, and no other hazards, in the fund, on all buildings owned by the state, state industries, political subdivisions, international peace gardens, and winter shows, and the fixtures and permanent contents in such buildings, to the extent of not to exceed the insurable value of such property, as the value is determined by the commissioner and approved by the officer or board having control of such property, or, in case of disagreement, by approval through arbitration.

All public buildings owned by a political subdivision, in lieu of coverage provided for in this section, may at the option of the governing body of the political subdivision be insured on the basis of competitive sealed bids, through the fund which shall be invited to submit a sealed bid or private insurance companies licensed to do business in this state, against damage resulting from hazards, which include those types of hazards that may be insured against by the fund. The governing body may reject any or all such bids.

All public libraries owned by the state or political subdivisions may, in addition to the coverage provided for in this section, be covered against damage through vandalism. If this coverage cannot be extended to the public libraries situated within this state, the libraries may contract for this coverage with private insurance companies; provided, that this coverage meets the recommendations of the insurance code of the American library association.

SECTION 8. AMENDMENT. Section 26.1-22-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-11. Arbitration. In case the commissioner and the board or officer having charge of any property are unable to agree upon the insurable value of the property, the value must be determined by a recognized appraisal company at the expense of the state industry, political subdivision, an international peace garden, or a winter show owning the property, if the appraisal company arbitrator meets with the approval of both the commissioner and the board or officer concerned. If they are unable to agree on an arbitrator, then the matter must be submitted to arbitration by a board of arbitration selected as provided by this section. The commissioner and the board or officer in charge of the property each shall select one competent, disinterested contractor, architect, experienced appraiser, appraisal company, or one of the members of such board, and the two so chosen shall

*** NOTE:** Section 26.1-22-10 was also amended by section 2 of Senate Bill No. 2147, chapter 357.

select a third person of similar qualification. The three arbitrators shall proceed to determine the insurable value of the property, and the decision of the arbitrators, or a majority of them, must be given in writing to the commissioner and the board or officials concerned and shall be binding upon both parties. Each party to the dispute shall pay the expense and charges of the arbitrator chosen by the party, and the expense and the charges of the third arbitrator must be borne equally by both parties to the dispute. The decision by the board of arbitration must be made within thirty days from the time the matter is submitted to it. Until the commissioner and board or officer in charge shall have agreed, or in case of dispute, until the decision of the appraisal company or arbitrators, the property shall continue to be valued in the same amount as previously, or in case of new buildings or property, in the amount fixed by the commissioner. The same procedure must be followed in case of new construction or in any increase or decrease in values.

SECTION 9. AMENDMENT. Section 26.1-22-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-14. Assessments and reporting of premiums and losses. If the reserve balance is less than twelve million dollars, the commissioner shall determine the amount of money necessary to bring the reserve balance up to twelve million dollars and the commissioner shall then levy an assessment against every policy in force with the fund on all public property or property belonging to an international peace garden or a winter show. The assessment must be computed as follows:

The eighty percent or ninety percent coinsurance rate established by the insurance services office for each insured property to which the eighty percent or ninety percent coinsurance rate may be applicable, and the full rate established for properties to which the eighty percent or ninety percent coinsurance rate is not applicable under the rules of the insurance services office, must be applied to the amount of insurance provided in each policy and the result of the application of the rate to the amount of insurance shall set the tentative assessment to be made against the policy. The total of all tentative assessments must then be ascertained. The percentage of the assessment necessary to restore the reserve balance to the sum of twelve million dollars must then be computed and collected on each policy; provided, that until the reserve balance shall reach twelve million dollars, the assessment must be in an amount determined by the commissioner but in no event in excess of sixty percent of the rates set by the insurance services office unless the reserve balance is depleted below three million dollars. In case of a fractional percentage the next higher whole percent must be used in such computation.

The commissioner shall submit not later than December thirty-first of each odd-numbered year, all data concerning premiums written and losses incurred during the previous biennium ending July thirty-first to the insurance services office so that the experience of the fund may be included in the computation of rates to apply to the classes of business written by the fund.

SECTION 10. AMENDMENT. Section 26.1-22-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-15. Collection of premiums and assessments. The commissioner, as soon as possible after providing for the insurance of any property belonging to the state, a political subdivision, an international peace garden, or a winter show, shall certify to the board or officer in charge of the property the amount of premium or assessment due from the state, state industry, political subdivision, an international peace garden, or a winter show. The certificate must give the name, location, and description of the property insured, the amount of insurance written thereon, and the amount of the premium or assessment. The proper officer shall remit to the commissioner the amount of the premium or assessment within sixty days after the date of the certification. The commissioner shall deposit the premiums and assessments with the state treasurer to the credit of the fund. If the premiums or assessments are not paid within sixty days after the date on which they are certified, they shall bear interest at the rate of six percent per annum and collection thereof may be enforced by appropriate action. The attorney general and the state's attorney of the several counties shall bring appropriate actions to enforce the collections of the premium and assessment upon request of the commissioner. Payment of the premiums or assessments certified pursuant to this section may be made by any state department, officer, board, institution, or agency and by any political subdivision, out of any available funds, notwithstanding that no specific appropriation or tax levy has been made therefor.

SECTION 11. AMENDMENT. Section 26.1-22-18 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-18. Arbitration of loss. In case an agreement as to the amount of loss sustained by any building or property insured under this chapter cannot be arrived at between the commissioner or the commissioner's representative and the person or board representing the state, political subdivision, an international peace garden, or a winter show owning the building or property, the loss may be arbitrated as provided by law.

SECTION 12. AMENDMENT. Section 39-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-01-02. Motor vehicles owned or leased by the state to display name on side of vehicles - Exceptions - Penalty. All motor vehicles owned and operated by the state, except the official vehicle for use by the governor, must have displayed on each front door the words NORTH DAKOTA. The words must be in letters four inches [10.16 centimeters] in height. Two and one-half inches [6.35 centimeters] directly below those words there must be printed in letters one and one-half inches [3.81 centimeters] in height the name of the state agency owning or leasing the motor vehicle. The width of the display required by this section must be proportionate to the required height. The color of the lettering must be in clear and sharp contrast to the background. The state highway patrol and all peace officers of this state shall enforce ~~the provisions of~~ this section. The state auditor, in the course of spot checking or verifying the inventory of any state agency, shall include in the auditor's report to the governor and the legislative assembly any instance of noncompliance with this section that comes to the auditor's attention. The above requirements do not apply to vehicles ~~owned and operated by the attorney general's office, the bureau of criminal investigation, or the highway patrol, vehicles used for drivers education at state institutions, the state highway patrol, or vehicles used principally in juvenile, parole, and placement service, or selected cars or vehicles of the~~

state penitentiary approved by the director of institutions, vehicles owned and operated by any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world; or to any truck owned by any state agency. A passenger motor vehicle bearing official plates must be in compliance with this section. The administrator of any state agency who uses or authorizes the use of a motor vehicle which is not marked as required by this section is guilty of a class B misdemeanor.

SECTION 13. AMENDMENT. Section 39-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-01-03. State-owned motor vehicle not to be used for private use or in political activities. No person, officer, or employee of the state or of any department, board, bureau, commission, institution, industry, or other agency of the state, or of any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world, may use or drive any motor vehicle belonging to the state or to any department, board, bureau, commission, institution, industry, or other agency of the state, or of any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world, for private use, or while engaged in any political activity.

SECTION 14. AMENDMENT. Subsection 1 of section 39-01-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state or any department, agency, or bureau, as well as any county, city, or other political subdivision including townships, school districts, and park districts, and any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world, using or operating motor vehicles and aircrafts, may carry insurance for their own protection and for the protection of any employees from claims for loss or damage arising out of or by reason of the use or operation of the motor vehicle or aircraft, whether the vehicle or aircraft at the time the loss or damage in question occurred was being operated in a governmental undertaking or otherwise. If a premium savings will result therefrom, the insurance policy may be taken out for more than one year, but in no event beyond a period of five years.

SECTION 15. AMENDMENT. Subdivision b of subsection 2 of section 39-04-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- b. Motor vehicles owned by or in possession of Indian mission schools ~~or~~ by this state or any of its agencies, departments, or political subdivisions, including school districts possessing a motor vehicle or vehicles used for driver education instruction, or by any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world; provided, however, that the vehicles must display license plates provided by the motor vehicle department at actual cost.

Each motor vehicle loaned or furnished by a licensed North Dakota motor vehicle dealer to a school district in North Dakota to be used exclusively for instructing pupils in the driver education and training program conducted by the school district will be assigned an official license plate bearing a decal with the words "driver education" appearing on it. The license plates must be used only on the motor vehicles furnished by dealers and used in the driver education program, and for no other purpose except for garaging and safekeeping of the motor vehicle.

No person may use a motor vehicle bearing official license plates bearing a decal with the words "driver education" appearing on it as provided for in this subdivision for any purpose other than driver education course instruction. No person is in violation of this subdivision if he is required by the dealer or a school administrator to house or otherwise protect the vehicle at his home or other facility.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 357

SENATE BILL NO. 2147
(Committee on State and Federal Government)
(At the request of the Commissioner of Insurance)

FIRE AND TORNADO FUND COVERAGE

AN ACT to amend and reenact subsection 2 of section 26.1-22-01 and section 26.1-22-10 of the North Dakota Century Code, relating to insurance of permanent contents through the fire and tornado fund and the insurable value of property; and to repeal sections 26.1-22-07, 26.1-22-12, and 26.1-22-20 of the North Dakota Century Code, relating to fire and tornado fund insurance on farm buildings and property owned by the Bank of North Dakota, insurance policy fees collected, and the replacement of fire and tornado fund insurance policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 2 of section 26.1-22-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Permanent contents" refers only to such public property, either owned or leased, usually kept or used in or about public buildings insured in the fund, and to all public personal property usually kept or used in or about all buildings used for public purposes, or within one hundred feet [30.48 meters] of all such buildings, or while on sidewalks, streets, alleys, yards, detached platforms, and in or on railway cars. Permanent contents includes similar property owned by a winter show. Permanent contents does not include automobiles, trucks, tractors, road machinery, or similar property used principally outside of such buildings.

** SECTION 2. AMENDMENT. Section 26.1-22-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-22-10. Commissioner to provide insurance on all buildings. Upon application the commissioner shall provide for insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosions, riot attending a strike, aircraft, smoke, vehicles, or any other risks of direct physical loss, all in the manner and subject to the restrictions of the standard fire insurance policy and standard endorsement, and no other hazards, in the fund, on all buildings owned by the state, state industries, political subdivisions, and winter shows, and the fixtures and permanent contents in such buildings, to the extent of not to exceed the insurable value of such property, as the value is determined by agreed to between the commissioner and approved by the officer or board having control of such property, or, in case of disagreement, by approval through arbitration.

* NOTE: Section 26.1-22-01 was also amended by section 2 of House Bill No. 1073, chapter 356.

** NOTE: Section 26.1-22-10 was also amended by section 7 of House Bill No. 1073, chapter 356.

All public buildings owned by a political subdivision, in lieu of coverage provided for in this section, may at the option of the governing body of the political subdivision be insured on the basis of competitive sealed bids, through the fund which shall be invited to submit a sealed bid or private insurance companies licensed to do business in this state, against damage resulting from hazards, which include those types of hazards that may be insured against by the fund. The governing body may reject any or all such bids.

All public libraries owned by the state or political subdivisions may, in addition to the coverage provided for in this section, be covered against damage through vandalism. If this coverage cannot be extended to the public libraries situated within this state, the libraries may contract for this coverage with private insurance companies; provided, that this coverage meets the recommendations of the insurance code of the American library association.

SECTION 3. REPEAL. Sections 26.1-22-07, 26.1-22-12, and 26.1-22-20 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 358

HOUSE BILL NO. 1107
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

UNSATISFIED JUDGMENT FUND LEGAL COSTS

AN ACT to provide the unsatisfied judgment fund with authority to pay legal costs associated with collections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Collection of amounts owed the unsatisfied judgment fund - Costs paid. Payments from the unsatisfied judgment fund may be made, without court order, to pay contingent professional fees and costs incurred in connection with the recovery of amounts owed to the fund by any person on whose behalf the fund has previously paid a full or partial judgment.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 359

SENATE BILL NO. 2242
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

GOVERNMENT SELF-INSURANCE POOLS

AN ACT to provide for the regulation of government self-insurance pools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Government self-insurance pools - Regulation - Reinsurance.

1. Any two or more entities that have united to self-insure against their legal liability under chapter 32-12.1 or any state agency that unites with another state agency, political subdivision, or both, to self-insure against their legal liabilities are subject to the provisions of this Act with the exception of a city and its park district established pursuant to chapter 40-49. Government self-insurance pools may only provide coverage of the following types for pool members, their officers, employees, and agents:
 - a. Casualty insurance, including general, public officials, and professional liability coverages.
 - b. Automobile insurance including motor vehicle liability insurance coverage, security for motor vehicles owned or operated as required by chapter 26.1-41, and protection against other liability and laws associated with the ownership of motor vehicles and automobile physical damage coverages.
 - c. Property insurance, including inland marine coverage, money and securities coverage, and extra expense coverage. However, this subdivision does not authorize government self-insurance pools to write those types of insurance coverages offered by the state fire and tornado fund under the provisions of chapter 26.1-22 as they existed on December 31, 1988.
 - d. Other coverages authorized by the commissioner and necessary to a pool's membership.
2. A government self-insurance pool may not expose itself to loss on any single risk or hazard in an amount exceeding ten percent of the amount of its admitted assets unless the pool obtains excess insurance or reinsurance with insurance companies approved for such business by the commissioner of insurance.

SECTION 2. Government self-insurance pools not insurers. Any government self-insurance pool organized under chapter 32-12.1 is not an insurance company or insurer. The coverages provided by such pools and the administration of such pools does not constitute the transaction of insurance

business. Participation in a self-insurance pool under this Act does not constitute a waiver of any existing immunities otherwise provided by the constitution or laws of this state.

SECTION 3. Government self-insurance pool approval from the commissioner of insurance. Before the commissioner of insurance authorizes the operation of a government self-insurance pool, the pool shall provide the following:

1. A financial plan setting forth:
 - a. The insurance coverages to be offered by the pool, applicable deductible levels, and the maximum level of claims to be self-insured against.
 - b. The amount of cash reserves to be set aside for the payment of claims.
 - c. The amount of aggregate excess insurance or reinsurance coverage to be purchased in the event that the pool's resources are exhausted in a given fiscal period.
2. A plan of management which must provide the following:
 - a. The means of establishing the governing authority of the pool and, if the governing authority of the pool is set forth in articles of incorporation, the articles must be filed in the office of the secretary of state and a certified copy must be filed with the commissioner. The commissioner may not issue a certificate to the pool if, in the commissioner's judgment, the company's name too closely resembles the name of an existing corporation or is liable to mislead the public.
 - b. The responsibility of the governing authority with regard to fixing contributions to the pool by participating government political subdivisions, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surplus, and administering the pool in the event of termination or insolvency.
 - c. The basis upon which new members may be admitted to, and existing members may leave or have membership terminated by, the pool.
 - d. The identification of funds and reserves by exposure areas.
 - e. Other provisions necessary or desirable for the operation of the pool.
3. A plan for the election by pool members of a governing authority, which must be a board of directors for the pool.

SECTION 4. Annual financial statements required - Confidentiality.

1. Every government self-insurance pool authorized by the commissioner of insurance shall file with the commissioner on or before March thirty-first of each year an audited statement of its financial

condition and business for the year ending on the preceding December thirty-first. The financial statement must be audited by an independent certified public accountant and the financial statement must be in a form prescribed or approved by the commissioner. The financial statement must be verified by the signature and oath of the pool's authorized representative. If a self-insurance pool fails to provide for the audited financial statement required by this section, the commissioner of insurance shall have the audit performed at the expense of the pool. All working papers of the commissioner's staff are confidential and not open for public inspection until the report is final unless the commissioner declares that the material or any part of the material is not confidential. If a self-insured pool is found to be in a deficit condition, the pool shall file a financial plan acceptable to the commissioner to correct the deficit condition.

2. At least triennially, and at such other times as the commissioner of insurance deems necessary, the commissioner shall inspect and examine the affairs of every government self-insurance pool. The commissioner shall conduct examinations of each self-insured government pool and all expenses and costs relating to the examination must be paid by the pool.
3. The commissioner of insurance shall monitor the financial solvency of government self-insurance pools to ensure that those pool's liabilities for claims, present and contingent, and other expenses are at no time greater than its assets. The commissioner may enjoin a self-insured government pool from conducting further business or take other appropriate regulatory action whenever in the commissioner's judgment a pool is insolvent or otherwise financially impaired.

SECTION 5. Investment of assets. A government self-insurance pool may only invest its funds and accumulations in those investments described in section 26.1-05-19.

SECTION 6. Pool reserve records confidential. Information regarding that portion of the funds or liability reserves of a self-insured government pool established for purposes of satisfying a specific claim or cause of action is confidential. A person is not entitled to discover that portion of the funds or liability reserves established for purposes of satisfying a claim or cause of action, except that the reserve is discoverable in any supplementary or ancillary proceeding to enforce a judgment against the pool or a governmental entity participating in the pool.

SECTION 7. Self-insurance contracts - Approval of rates and forms. No insurance policy, certificate, contract, agreement, or evidence of participation may be issued or delivered by a self-insured government pool nor may any application, rider, or endorsement be used in connection therewith until the rate and form thereof has been filed and approved by the insurance commissioner under sections 26.1-30-19 through 26.1-30-21.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 360

HOUSE BILL NO. 1395
(Tollefson, Wald)

INSURANCE PREMIUM AUDITS

AN ACT to create and enact a new section to chapter 26.1-24 of the North Dakota Century Code, relating to insurance audits by insurers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

Insurer's audit to determine premium - Time limitation. An insurer providing commercial multiple peril insurance may conduct an audit to determine the premium due or to be refunded only within one hundred eighty days after the expiration date of the policy unless the insured agrees in writing to extend that period of time. During the period allowed to conduct the audit, the insurer may not estimate the amount of premium to be refunded to or paid by the insured.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 361

HOUSE BILL NO. 1408
(Tollefson, Wald)

INSURANCE COMPANY RATEMAKING

AN ACT to amend and reenact subdivision a of subsection 1 of section 26.1-25-03 of the North Dakota Century Code, relating to the making of rates for insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 26.1-25-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. Due consideration shall be given to past and prospective loss experience within ~~and outside~~ this state and outside this state to the extent that the consideration is given to areas the commissioner determines are representative of this state, to any conflagration and catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, to past and prospective expenses both countrywide, as determined by the commissioner, and those specially applicable to this state, and to all other relevant factors within and outside this state. In the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which the experience is available.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 362

SENATE BILL NO. 2271
(Senators Langley, Nething)
(Representatives Dorso, Oban)

ACCIDENT PREVENTION COURSE PREMIUM EFFECT

AN ACT to amend and reenact section 26.1-25-04.1 of the North Dakota Century Code, relating to premium reductions for accident prevention course completion.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-25-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-25-04.1. Motor vehicle insurance rate filings - Premium reduction for accident prevention course completion. All rate filings with the commissioner for motor vehicle liability and physical damage insurance must provide for an appropriate reduction in premium charges for ~~those persons fifty five years of age and older~~ the principal operators of motor vehicles for at least a two-year period following their successful completion of a motor vehicle accident prevention course. The reduction in premium charges must be separately disclosed. The premium billing must disclose the reduction in premium charges with respect to the person eligible for the reduction. The reduction in premium charges does not apply to an operator who is subject to an experience rating or a driver education premium reduction. If a policy insures two or more motor vehicles, the premium reduction applies only to the motor vehicle principally operated by the person who has satisfactorily completed the motor vehicle accident prevention course. The course must be approved by the superintendent of the state highway patrol. The course sponsor shall provide each successful participant a certificate which is the basis for the insurance discount.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 363

HOUSE BILL NO. 1489
(Whalen, O. Hanson)

INSURANCE AGENT CONTINUING EDUCATION

AN ACT to amend and reenact section 26.1-26-31.1 of the North Dakota Century Code, relating to an exemption from the continuing education requirements for insurance agents, brokers, and consultants, to credit for certain courses, and to reporting requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-26-31.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-26-31.1. Continuing education required - Exceptions.

1. Except as otherwise provided in this section, any person licensed as an insurance agent, insurance broker, surplus lines insurance broker, or insurance consultant shall provide the commissioner evidence, as required by the commissioner, that the person attended or participated in continuing education of not less than fifteen hours per year of approved coursework, of which seven and one-half hours per year must be classroom hours. The commissioner may waive the requirement of seven and one-half hours per year of classroom hours. The commissioner may reduce the minimum number of hours per year of approved coursework for any person having a license limited to a single line of insurance as described in section 26.1-26-11. The continuing education advisory task force may recommend granting up to fifteen hours continuing education credit for nationally recognized insurance education correspondence programs. The commissioner shall review the task force's recommendation, and the commissioner may approve up to fifteen hours of credit. Credit for courses attended in any one year over the minimum number of hours of coursework required may be credited to the year next preceding the year in which they were earned or to the year next following the year in which they were earned. Reports of continuing education must be made at the end of each ~~four-year~~ two-year period following licensure, except as provided in subsection 2. No continuing education is required of a life insurance agent who is at least sixty-two years of age, who has a combined total years of licensure as such agent and years of age which equals eighty-five, and whose commissions from new business each year do not exceed ten thousand dollars. No continuing education is required of an insurance agent who sells only group credit life or group credit accident and health insurance to cover an indebtedness.

2. The commissioner shall by rule divide the persons subject to this section into ~~four~~ two equal segments for the purpose of reporting, as follows:
 - a. ~~One-fourth~~ One-half of the persons shall file their report showing at least the minimum number of required hours of approved coursework for the ~~first year under this section~~ previous two years within thirty days of January ~~1, 1987~~ first of every odd-numbered year.
 - b. ~~One-fourth~~ One-half of the persons shall file a report showing at least the minimum number of required hours of approved coursework for the ~~first previous two years under this section~~ within thirty days of January 1, 1988 first of every even-numbered year.
 - c. ~~One-fourth~~ One-half of the persons shall file a report showing at least the minimum number of required hours of approved coursework for the ~~first three years under this section~~ within thirty days of January 1, 1989.
 - d. ~~One-fourth~~ One-half of the persons shall file a report showing at least the minimum number of required hours of approved coursework for the ~~first four years under this section~~ within thirty days of January 1, 1990.
3. All persons licensed after January 1, ~~1987~~ 1989, shall report within thirty days of the first day of January of the year following the ~~fourth~~ second anniversary of the person's licensure.

Approved April 7, 1989
Filed April 7, 1989

CHAPTER 364

HOUSE BILL NO. 1064
(Payne)

PERSONAL INSURANCE INSURABLE INTEREST

AN ACT to amend and reenact subsection 3 of section 26.1-29-09.1 of the North Dakota Century Code, relating to an insurable interest in personal insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 26.1-29-09.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Insurable interest", with reference to personal insurance, includes only the following interests:
 - a. In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection.
 - b. In the case of persons other than those described in subdivision a, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest ~~which~~ that would arise only by, or would be enhanced in value by, the death, disablement, or injury of the individual insured.
 - c. ~~An~~ In the case of individual ~~party~~ parties to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a closed corporation or of an interest in the shares, ~~has an insurable interest in the life of each individual party to the contract for the purpose of the contract only, in addition to an insurable interest~~ which that may otherwise exist as to the life of the individual.
 - d. In the case of religious, educational, eleemosynary, charitable, or benevolent organizations, a lawful interest in the life of the individual insured if that individual has executed a written consent to the insurance contract.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 365

HOUSE BILL NO. 1652
(Shide, Oban, D. Olsen)

INSURANCE POLICY RETURN AND REFUND

AN ACT to create and enact a new section to chapter 26.1-33 of the North Dakota Century Code, relating to the right to return a life insurance policy and receive a refund; and to amend and reenact subdivision a of subsection 1 of section 26.1-45-09 of the North Dakota Century Code, relating to the right to return a long-term care insurance policy and receive a refund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-33 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Life insurance policies - Right to return policy. A person who purchases a life insurance policy issued or delivered in this state may return the policy within twenty days of delivery to the purchaser. If a policy is returned, the purchaser is entitled to a refund of the premium. Every life insurance policy issued or delivered in this state to any person must have a notice prominently printed on or attached to the first page of the policy stating in substance that the purchaser may return the policy within twenty days of its delivery and have the premium refunded if, after examination of the policy, the applicant is not satisfied for any reason.

SECTION 2. AMENDMENT. Subdivision a of subsection 1 of section 26.1-45-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- a. Individual long-term care insurance policyholders under sixty-five years of age may return the policy within ten days of its delivery and policyholders at least sixty-five years of age may return the policy within thirty days of its delivery. Any policyholder that returns a policy under this section may have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason. Individual long-term care insurance policies must have a notice prominently printed on the first page of the policy or attached to the first page stating that the policyholder has the right to return the policy within ten days of its delivery if the policyholder is under sixty-five years of age and within thirty days after its delivery if the policyholder is at least sixty-five years of age and to have the premium refunded if, after examination of the policy, the policyholder is not satisfied for any reason.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 366

SENATE BILL NO. 2464
(Senators Stenehjem, Olson, Heinrich)
(Representatives R. Larson, Dalrymple, Rydell)

SUBSTANCE ABUSE AND MENTAL ILLNESS COVERAGE

AN ACT to amend and reenact sections 26.1-36-08 and 26.1-36-09 of the North Dakota Century Code, relating to group health policy and health service contract coverage for substance abuse and mental illness.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-08. Group health policy and health service contract substance abuse coverage.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group or blanket or franchise or association basis unless the policy or contract provides benefits, of the same type offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of alcoholism, drug addiction, or other related illness, by a hospital, as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' rules pursuant thereto or as licensed under section 23-17.1-01, by a regional human service center licensed under section 50-06-05.2, offering treatment for the prevention or cure of alcoholism, drug addiction, or other related illness, or treatment services furnished by or under the supervision of a licensed physician or a licensed psychologist. For health services provided in regional human service centers, reimbursement rates must be reasonably similar to the charges for care provided by hospitals as defined in this section which benefits meet or exceed the benefits provided in subsection 2.
2. The benefits must be provided for inpatient treatment and treatment by partial hospitalization and outpatient treatment:
 - a. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of sixty days of services covered under this section and section 26.1-36-09 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' rules pursuant thereto, or as licensed under section 23-17.1-01 offering treatment for

the prevention or cure of alcoholism, drug addiction, or other related illness.

- b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred twenty days of services covered under this section and section 26.1-36-09 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' rules pursuant thereto or as licensed under section 23-17.1-01, or by a regional human service center licensed under section 50-06-05.2, offering treatment for the prevention or cure of alcoholism, drug addiction, or other related illness. For services provided in regional human service centers, charges must be reasonably similar to the charges for care provided by hospitals as defined in this subsection.
- c. Benefits may also be provided for a combination of inpatient and partial hospitalization treatment. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by partial hospitalization; provided, however, that no more than forty-six days of the inpatient treatment benefits required by this section may be traded for treatment by partial hospitalization.
- d. In the case of benefits provided for outpatient treatment, the benefits must be provided for a minimum of twenty visits for services covered under this section ~~and section 26.1-36-09~~ in any calendar year, provided the diagnosis, evaluation, and treatment services are provided within the scope of licensure by a licensed physician, a licensed psychologist who is eligible for listing on the national register of health service providers in psychology, or the treatment services are provided within the scope of licensure by a licensed addiction counselor. The insurance company, nonprofit health service corporation, or health maintenance organization may not establish a deductible or a copayment for the first five visits in any calendar year, and may not establish a copayment greater than twenty percent for the remaining visits.

"Partial hospitalization" means continuous treatment for at least three hours, but not more than twelve hours, in any twenty-four-hour period and includes the medically necessary treatment services provided by licensed professionals under the supervision of a licensed physician.

3. This section does not prevent any insurance company, nonprofit health service corporation, or health maintenance organization from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to those required by this section, where the policy or contract is not subject to such provisions.

SECTION 2. AMENDMENT. Section 26.1-36-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-09. Group health policy and health service contract mental disorder coverage.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group or blanket or franchise or association basis unless the policy or contract provides benefits, of the same type offered under the policy or contract for other illnesses, for health services to any person covered under the policy or contract, for the diagnosis, evaluation, and treatment of mental disorder and other related illness by a hospital, as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' rules pursuant thereto or as licensed under section 23-17-1-01, by a regional human service center licensed under section 50-06-05-2, offering treatment for the prevention or cure of mental disorder and other related illness, or treatment services furnished by or under the supervision of a licensed physician or a licensed psychologist, which benefits meet or exceed the benefits provided in subsection 2.
2. The benefits must be provided for inpatient treatment and treatment by partial hospitalization and outpatient treatment:
 - a. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of sixty days of services covered under this section and section 26.1-36-08 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' rules pursuant thereto offering treatment for the prevention or cure of mental disorder or other related illness.
 - b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred twenty days of services covered under this section and section 26.1-36-08 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and the state department of health and consolidated laboratories' rules pursuant thereto or by a regional human service center licensed under section 50-06-05-2, offering treatment for the prevention or cure of mental disorder or other related illness. For services provided in regional human service centers, charges must be reasonably similar to the charges for care provided by hospitals as defined in this subsection.
 - c. Benefits may also be provided for a combination of inpatient and partial hospitalization treatment. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by partial hospitalization; provided, however, that no more than forty-six days of the inpatient treatment benefits required by this section may be traded for treatment by partial hospitalization.
 - d. In the case of benefits provided for outpatient treatment, the benefits must be provided for a minimum of **twenty visits** thirty

hours for services covered under this section ~~and section 26-1-36-08~~ in any calendar year provided the diagnosis, evaluation, and treatment services are provided within the scope of licensure by a licensed physician, a licensed psychologist who is eligible for listing on the national register of health service providers in psychology, or a licensed certified social worker who is a board certified diplomate in clinical social work, or the treatment services are provided within the scope of licensure by a nurse who holds advanced licensure with a scope of practice within mental health. The insurance company, nonprofit health service corporation, or health maintenance organization may not establish a deductible or a copayment for the first five ~~visits~~ hours in any calendar year, and may not establish a copayment greater than twenty percent for the remaining ~~visits~~ hours.

"Partial hospitalization" means continuous treatment for at least three hours, but not more than twelve hours, in any twenty-four-hour period and includes the medically necessary treatment services provided by licensed professionals under the supervision of a licensed physician.

3. This section does not prevent any insurance company, nonprofit health service corporation, or health maintenance organization from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to those required by this section, where the policy or contract is not subject to such provisions.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 367

HOUSE BILL NO. 1391
(Representatives J. DeMers, Myrdal, Kelly)
(Senators Heinrich, Nalewaja, Mushik)

MAMMOGRAM INSURANCE COVERAGE

AN ACT to create and enact a new section to chapter 26.1-36 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to health insurance coverage for mammogram examinations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Health insurance policy and health service contract - Mammogram examination coverage.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis unless the policy, contract, or evidence of coverage provides benefits, of the same type offered under the policy or contract for illnesses, for health services to any person covered under the policy or contract for:
 - a. One baseline mammogram examination for each woman who is at least thirty-five but less than forty years of age.
 - b. One mammogram examination every two years or more frequently if ordered by a physician for women who are at least forty but less than fifty years of age.
 - c. One mammogram examination every year for women age fifty and over.
2. This section does not apply to individually guaranteed renewable supplemental specified disease, long-term care, or other limited benefit policies.

SECTION 2. A new section to chapter 54-52.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Insurance to cover mammogram examinations. The board shall provide medical benefits coverage under either a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 for:

1. One baseline mammogram examination for each woman who is at least thirty-five but less than forty years of age.
2. One mammogram examination every two years or more frequently if ordered by a physician for women who are at least forty but less than fifty years of age.
3. One mammogram examination every year for women age fifty and over.

Approved March 22, 1989

Filed March 23, 1989

CHAPTER 368

SENATE BILL NO. 2527

(Keller, J. Meyer)

(Approved by Committee on Delayed Bills)

PREGNANCY COMPLICATIONS INSURANCE COVERAGE

AN ACT to create and enact a new section to chapter 26.1-36 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to maternity benefit health insurance coverage for complications of pregnancy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Health insurance policy and health service contract - Involuntary complications of pregnancy coverage. No insurance company, nonprofit health service corporation, or health maintenance organization may deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage on an individual, group, blanket, franchise, or association basis if the policy, contract, or evidence of coverage contains any exclusion, reduction, or other limitation as to coverage, deductibles, or coinsurance provisions, as to involuntary complications of pregnancy, unless the provisions apply generally to all benefits paid under the policy, contract, or evidence of coverage. If a fixed amount is specified in the policy, contract, or evidence of coverage for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy must be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy are an illness and entitled to benefits otherwise provided by the policy, contract, or evidence of coverage. If the policy, contract, or evidence of coverage contains a maternity deductible, the maternity deductible applies only to expenses resulting from normal delivery and caesarean section delivery; however, expenses for caesarean section delivery in excess of the deductible must be treated as expenses for any other illness under the policy, contract, or evidence of coverage. For purposes of this section, "involuntary complications of pregnancy" includes nonelective caesarean section delivery.

SECTION 2. A new section to chapter 54-52.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Insurance to cover involuntary complications of pregnancy. Medical benefits coverage provided under either a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 may not contain any exclusion, reduction, or other limitation as to coverage, deductible, or coinsurance provision, as to involuntary complications of pregnancy unless the provisions apply generally to all

benefits paid under the coverage. If a fixed amount is specified for in the coverage for surgery, the fixed amounts for surgical procedures involving involuntary complications of pregnancy must be commensurate with other fixed amounts payable for procedures of comparable difficulty and severity. In a case where a fixed amount is payable for maternity benefits, involuntary complications of pregnancy are an illness and entitled to benefits otherwise provided by the coverage. Where the coverage contains a maternity deductible, the maternity deductible applies only to expenses resulting from normal delivery and caesarean section delivery; however, expenses for caesarean section delivery in excess of the deductible must be treated as expenses for any other illness under the coverage. For purposes of this section, "involuntary complications of pregnancy" includes nonelective caesarean section delivery.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 369

SENATE BILL NO. 2416
(Todd)

INSURANCE COVERAGE FOR CERTAIN DISORDERS

AN ACT to create and enact a new section to chapter 26.1-36 and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to mandated coverage for temporomandibular joint and craniomandibular disorders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-36 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Coverage for treatment of certain disorders. Except for policies which only provide coverage for specified diseases, no policy or certificate of health, medical, hospitalization, or accident and sickness insurance regulated under this chapter, or a subscriber contract provided by a nonprofit health service corporation, preferred provider organization, or health maintenance organization, may be issued, renewed, continued, delivered, issued for delivery, or executed in this state after January 1, 1990, unless the policy, certificate, plan, or contract specifically provides coverage for surgical and nonsurgical treatment of temporomandibular joint disorder and craniomandibular disorder. Coverage must be the same as that for treatment to any other joint in the body, and applies if the treatment is administered or prescribed by a physician or a dentist. Benefits for the coverage may be limited to a lifetime maximum of eight thousand dollars per person for surgery, and two thousand dollars for nonsurgical treatment.

SECTION 2. A new section to chapter 54-52.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Coverage for treatment of certain disorders. The board shall provide coverage under either a contract for insurance pursuant to section 54-52.1-04 or under a self-insurance plan pursuant to section 54-52.1-04.2 for coverage for surgical and nonsurgical treatment of temporomandibular joint disorder and craniomandibular disorder. Coverage must be the same as that for treatment to any other joint in the body, and applies if the treatment is administered or prescribed by a physician or a dentist. Benefits for the coverage may be limited to a lifetime maximum of eight thousand dollars per person for surgery, and two thousand dollars for nonsurgical treatment.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 370

SENATE BILL NO. 2283
(Lips)

PHARMACY CHOICE UNDER INSURANCE CONTRACTS

AN ACT to create and enact a new section to title 26.1 of the North Dakota Century Code, relating to freedom of choice for pharmacy services; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to title 26.1 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Freedom of choice for pharmacy services.

1. No third party payor including a health care insurer as defined in section 26.1-47-01, providing pharmacy services and prescription drugs to any beneficiary may:
 - a. Prevent a beneficiary from selecting the pharmacy or pharmacist of the beneficiary's choice to provide pharmaceutical goods and services, provided that pharmacist or pharmacy is licensed in this state;
 - b. Impose upon any beneficiary selecting a participating or contracting provider a copayment, fee, or other condition not equally imposed upon all beneficiaries in the plan selecting a participating or contracting provider; or
 - c. Deny any pharmacy or pharmacist the right to participate as a preferred provider under chapter 26.1-47 or as a contracting provider for any policy or plan, provided the pharmacist or pharmacy is licensed in this state, and accepts the terms of the third-party payor's contract.
2. Notwithstanding the provisions of subsection 1, the department of human services may exclude, from participation in the medical assistance program administered under chapter 50-24.1 and title XIX of the Social Security Act [Pub. L. 89-97; 79 Stat. 343; 42 U.S.C. 1396, et seq.], as amended, any provider of pharmacy services who does not agree to comply with state and federal requirements governing the program, or who, after so agreeing, fails to comply with those requirements.
3. Any provision in a health insurance policy in this state which violates the provisions in subsection 1 is void.
4. Any person who violates this section is guilty of a class A misdemeanor and each violation is a separate offense. The commissioner may levy an administrative penalty not to exceed ten thousand dollars for a violation of this section.
5. The commissioner of insurance shall enforce the provisions of this section.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 371

HOUSE BILL NO. 1124
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

MEDICARE SUPPLEMENT INSURANCE

AN ACT to create and enact a new subsection to section 26.1-36-32 and two new sections to chapter 26.1-36 of the North Dakota Century Code, relating to standards for medicare supplement insurance policies, filing requirements for medicare supplement issuance policy advertising, and noncustodial care coverage; and to amend and reenact subsection 4 of section 26.1-36-31 and section 26.1-36-34 of the North Dakota Century Code, relating to the definition of medicare supplement insurance policies and medicare supplement insurance policy loss ratio standards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 26.1-36-31 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Medicare supplement policy" means a group or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization, which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare by reason of age. The term does not include:
 - a. A policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organizations.
 - b. A policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:
 - (1) Is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;
 - (2) Has been maintained in good faith for purposes other than obtaining insurance; and
 - (3) Has been in existence for at least two years prior to the date of its initial offering of the policy or plan to its members.

- c. Individual policies or contracts issued pursuant to a conversion privilege under an individual or group insurance policy or contract when the individual or group policy or contract includes provisions which are inconsistent with the requirements of sections 26.1-36-32 through 26.1-36-36.

SECTION 2. A new subsection to section 26.1-36-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

No medicare supplement insurance policy, contract, or certificate in force in the state may contain benefits that duplicate benefits provided by medicare.

SECTION 3. AMENDMENT. Section 26.1-36-34 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-34. Medicare supplement policy loss ratio standards. Medicare supplement policies must return benefits to individual policyholders in the aggregate of not less than sixty percent of premium received. The commissioner shall adopt rules to establish minimum standards for medicare supplement policy loss ratios on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of rules adopted pursuant to this section, medicare supplement policies issued as a result of individual solicitations through the mail or mass media advertising, including both print and broadcast advertising, are treated as individual policies. No entity may provide compensation to its agents or other producers which is greater than the renewal compensation that would have been paid on an existing policy if the existing policy is replaced by another policy with the same company where the new policy benefits are substantially similar to the benefits under the old policy and the old policy was issued by the same insurer or insurer group.

SECTION 4. Two new sections to chapter 26.1-36 of the North Dakota Century Code are hereby created and enacted to read as follows:

Filing requirements for advertising. Every insurer, health care service plan, or other entity providing medicare supplement insurance or benefits in this state shall provide a copy of any medicare supplement advertisement within ten days after its first use in this state whether through written, radio, or television medium for review or approval by the commissioner to the extent required or authorized by state law.

Noncustodial care coverage. An insurer offering convalescent nursing home, extended care facility, or skilled nursing facility coverage in excess of the one hundred fifty day medicare benefit shall also cover intermediate care confinements in the same manner as skilled care confinements.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 372

HOUSE BILL NO. 1123
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

LONG-TERM CARE INSURANCE

AN ACT relating to the rescission of long-term care insurance policies; and to amend and reenact sections 26.1-36-37, 26.1-45-06, and 26.1-45-07, and subsection 2 of section 26.1-45-09 of the North Dakota Century Code, relating to guaranteed renewability coverage of preexisting conditions, prior institutionalization requirements for long-term care insurance benefits, levels of care reimbursed by long-term care insurance policies, and outlines of coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36-37 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-36-37. Nursing home policy - Guaranteed renewable for life - Limitation on preexisting conditions. Any long-term care insurance policy or certificate providing benefits for confinement to a nursing home must be guaranteed renewable for life. However, the commissioner may for good cause shown allow, on whatever terms and conditions the commissioner deems necessary, an insurer to nonrenew long-term care insurance policies or certificates on a statewide basis. For the purposes of this section, "guaranteed renewable for life" means the insured has the right to continue the policy in force for life subject to the policy's terms by the timely payment of premiums during which the insurer has no right to make unilaterally any change in any provision of the policy while the policy is in force. The insurer may, however, in accordance with the provisions of the policy, make changes in premium rates as to all insureds who are placed in the same class for purposes of rate determination in the process of issuance of the policy or making it guaranteed renewable.

A policy or certificate of insurance providing benefits for confinement to a nursing home which is sold to a consumer in addition to another nursing home policy or which is sold to a consumer to replace such a policy may not contain any provision limiting payment of benefits due to preexisting conditions of the insured except if there is any time period remaining relating to the exclusion of coverage for preexisting conditions as specified in the underlying policy that remaining waiting period for coverage of preexisting conditions shall apply to the new policy unless the policy otherwise provides.

SECTION 2. Rescission of long-term care insurance policy or certificate. An insurer may not rescind a long-term care insurance policy or certificate after it has been in effect for six months except upon a showing

by the insurer that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

SECTION 3. AMENDMENT. Section 26.1-45-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-45-06. Preexisting conditions.

1. No long-term care insurance policy or certificate other than a policy or certificate issued to a group as defined in subdivision a of subsection 3 of section 26.1-45-01 may define "preexisting condition" as more restrictive than meaning the existence of symptoms that would cause an ordinarily prudent person to seek diagnosis, care, or treatment, or a condition for which medical advice or treatment was recommended by, or received from a provider of health care services, within:
 - a. Six months preceding the effective date of coverage of an insured who is sixty-five years of age or older on the effective date of coverage; or
 - b. Twenty-four months preceding the effective date of coverage of an insured who is under age sixty-five on the effective date of coverage six months preceding the effective date of coverage of an insured person.
2. No long-term care insurance policy or certificate issued on a group long-term care insurance policy other than a policy or certificate issued to a group as defined in subdivision a of subsection 3 of section 26.1-45-01 may exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within:
 - a. Six months following the effective date of coverage of an insured who is sixty-five years of age or older on the effective date of coverage; or
 - b. Twenty-four months following the effective date of coverage of an insured who is under sixty-five on the effective date of coverage six months following the effective date of coverage of an insured person.
3. The commissioner may extend the limitation periods set forth in this section as to the specific age group categories or specific policy forms upon findings that the extension is in the best interest of the public.
4. The limitation on defining a preexisting condition does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards.

SECTION 4. AMENDMENT. Section 26.1-45-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-45-07. Prior institutionalization requirement prohibited. No long-term care insurance policy that only provides benefits following institutionalization may condition the benefits upon admission to a facility for the same or related conditions within a period of less than thirty days after discharge from the institution.

1. Effective one year after the effective date of this Act, no long-term care insurance policy or certificate may be delivered or issued for delivery in this state if such policy:
 - a. Conditions eligibility for any benefits on a prior hospitalization requirement; or
 - b. Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of such institutional care.
2. Effective one year after the effective date of this Act, a long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in subsection 1 must clearly label such limitations or conditions in the manner prescribed by the commissioner.

SECTION 5. AMENDMENT. Subsection 2 of section 26.1-45-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. An outline of coverage must be delivered to an applicant for an individual long-term care insurance policy at the time of application for an individual policy. In the case of direct response solicitations, the insurer shall deliver the outline of coverage upon the applicant's request, or at the time the policy is delivered whichever comes first. The outline of coverage must include:
 - a. A description of the principal benefits and coverage provided in the policy.
 - b. A statement of the principal exclusions, reductions, and limitations contained in the policy.
 - c. A statement of the renewal provisions, including any reservation in the policy of a right to change premiums.
 - d. A statement that the outline of coverage is a summary of the policy issued or applied for, and that the policy should be consulted to determine governing contractual provisions.
- a. An outline of coverage must be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose.
 - (1) The commissioner shall prescribe a standard format including style, arrangement, overall appearance, and the content of an outline of coverage.

- (2) In the case of agent solicitations, an agent must deliver the outline of coverage prior to the presentation of an application or enrollment form.
 - (3) In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form.
- b. The outline of coverage must include:
- (1) A description of the principal benefits and coverage provided in the policy.
 - (2) A statement of the principal exclusions, reductions, and limitations contained in the policy.
 - (3) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage must be specifically described.
 - (4) A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains the governing contractual provisions.
 - (5) A description of the terms under which the policy or certificate may be returned and premium refunded.
 - (6) A brief description of the relationship of cost of care and benefits.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 373

HOUSE BILL NO. 1576
(Payne)

IMPAIRED OR INSOLVENT INSURERS

AN ACT to create and enact chapter 26.1-38.1 of the North Dakota Century Code, relating to life and health insurance policies and annuity contracts; and to repeal chapter 26.1-38 of the North Dakota Century Code, relating to the North Dakota life and health insurance guaranty association and the performance of contractual obligations under life and health insurance policies and annuity contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-38.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

26.1-38.1-01. Scope.

1. This section provides coverage for the policies and contracts specified in subsection 2:
 - a. To persons, except for nonresident certificate holders under group policies or contracts, who, regardless of where they reside, are the beneficiaries, assignees, or payees of the persons covered under subdivision b; and
 - b. To persons who are owners of or certificate holders under such policies or contracts; or, in the case of unallocated annuity contracts, to the persons who are contractholders, and who
 - (1) Are residents; or
 - (2) Are not residents, but only under all of the following conditions:
 - (a) The insurers that issued such policies or contracts are domiciled in this state;
 - (b) Such insurers never held a license or certificate of authority in the states in which such persons reside;
 - (c) Such states have associations similar to the association created by this Act; and
 - (d) Such persons are not eligible for coverage by such associations.
2. This Act provides coverage to the persons specified in subsection 1 for direct, nongroup life, health, annuity, and supplemental

policies or contracts for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this Act. Annuity contracts and certificates under group annuity contracts include guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.

3. This Act does not provide coverage for:

- a. Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policyholder or contractholder;
- b. Any policy or contract of reinsurance, unless assumption certificates have been issued;
- c. Any portion of a policy or contract to the extent that the rate of interest on which it is based:
 - (1) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's corporate bond yield average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and
 - (2) On and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's corporate bond yield average as most recently available;
- d. Any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured including benefits payable by an employer association or similar entity under:
 - (1) A multiple employer welfare arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;
 - (2) A minimum premium group insurance plan;
 - (3) A stop-loss group insurance plan; or
 - (4) An administrative services only contract;
- e. Any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policyholder or contractholder, in connection with the service to or administration of such policy or contract;

- f. Any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this state;
 - g. Any unallocated annuity contract issued by an employee benefit plan protected under the federal pension benefit guaranty corporation; and
 - h. Any portion of any unallocated annuity contract which is not issued to, or in connection with, a specific employee, union, or association, or natural persons benefit plan or a government lottery.
4. The benefits for which the association may become liable shall in no event exceed the lesser of:
- a. The contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer;
 - b. With any respect to one life, regardless of the number of policies, or contracts:
 - (1) Three hundred thousand dollars in life insurance death benefits, but not more than one hundred thousand dollars in net cash surrender and net cash withdrawal values for life insurance;
 - (2) One hundred thousand dollars in health insurance benefits, including any net cash surrender and net cash withdrawal values; or
 - (3) One hundred thousand dollars in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;
 - c. With respect to each individual participating in a government retirement plan established under section 401(k), 403(b), or 457 of the United States Internal Revenue Code covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, one hundred thousand dollars in present value annuity benefits, including net cash surrender and net cash withdrawal values; provided, however, that in no event shall the association be liable to expend more than three hundred thousand dollars in the aggregate with respect to any one individual under this subdivision and subdivision b; or
 - d. With respect to any one contractholder covered by an unallocated annuity contract not included in subdivision b, five million dollars in benefits, irrespective of the number of such contracts held by that contractholder.

26.1-38.1-02. Definitions. As used in this chapter:

1. "Account" means either of the two accounts created under section 26.1-38.1-03.
2. "Association" means the North Dakota life and health insurance guaranty association created under section 26.1-38.1-03.
3. "Commissioner" means the commissioner of insurance of this state.
4. "Contractual obligation" means any obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under section 26.1-38.1-01.
5. "Covered policy" means any policy or contract within the scope of this Act under section 26.1-38.1-01.
6. "Impaired insurer" means a member insurer which, after the effective date of this Act, is not an insolvent insurer, and is deemed by the commissioner to be potentially unable to fulfill its contractual obligations or is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.
7. "Insolvent insurer" means a member insurer which, after the effective date of this Act, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.
8. "Member insurer" means any insurer licensed or which holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under section 26.1-38.1-01, and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:
 - a. A health maintenance organization;
 - b. A fraternal benefit society;
 - c. A mandatory state pooling plan;
 - d. A mutual assessment company or any entity that operates on an assessment basis;
 - e. An insurance exchange; or
 - f. Any entity similar to any of the above.
9. "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's investors service, incorporated, or any successor thereto.
10. "Person" means any individual, corporation, partnership, association, or voluntary organization.
11. "Premiums" means amounts received in any calendar year on covered policies or contracts less premiums, considerations, and deposits returned thereon, and less dividends and experience credits

thereon. "Premiums" does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subsections 2 and 3 of section 26.1-38.1-01 and except that assessable premium shall not be reduced on account of subdivision c of subsection 3 of section 26.1-38.1-01, relating to interest limitations, and subsection 3 of section 26.1-38.1-01, relating to limitations with respect to any one individual, any one participant, and any one contractholder; provided that "premiums" shall not include any premiums in excess of five million dollars on any unallocated annuity contract not issued under a governmental retirement plan established under section 401(k), 403(b), or 457 of the United States Internal Revenue Code.

12. "Resident" means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business.
13. "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.
14. "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

26.1-38.1-03. Creation of the association.

1. There is created a nonprofit legal entity to be known as the North Dakota life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under section 26.1-38.1-07 and shall exercise its powers through a board of directors established under section 26.1-38.1-04. For purposes of administration and assessment, the association shall maintain two accounts:
 - a. The life insurance and annuity account which includes the following subaccounts:
 - (1) Life insurance account;
 - (2) Annuity account; and
 - (3) Unallocated annuity account which shall include contracts qualified under section 403(b) of the United States Internal Revenue Code.
 - b. The health insurance account.
2. The association shall come under the immediate supervision of the commissioner of insurance and shall be subject to the applicable provisions of the insurance laws of this state. Meetings or

records of the association may be opened to the public upon majority vote of the board of directors of the association.

26.1-38.1-04. Board of directors.

1. The board of directors of the association shall consist of not less than five nor more than nine member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner. To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights of the organizational meeting, each member insurer shall be entitled to one vote in person or by proxy. If the board of directors is not selected within sixty days after notice of the organizational meeting, the commissioner may appoint the initial members.
2. In approving selections or in appointing members to the board, the commissioner shall consider, among other things, whether all member insurers are fairly represented.
3. Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.

26.1-38.1-05. Powers and duties of the association.

1. If a member insurer is an impaired domestic insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, that are approved by the commissioner, and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:
 - a. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer;
 - b. Provide such moneys, pledges, notes, guarantees, or other means as are proper to effectuate subdivision a and assume payment of the contractual obligations of the impaired insurer pending action under subdivision a; or
 - c. Loan money to the impaired insurer.
2. If a member insurer is an impaired insurer, whether domestic, foreign or alien, and the insurer is not paying claims timely, then, subject to the preconditions specified in subsection 3, the association shall, in its discretion, either:

- a. Take any of the actions specified in subsection 1, subject to the conditions therein; or
 - b. Provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition therefor under claims of emergency or hardship in accordance with standards proposed by the association and approved by the commissioner.
3. The association shall be subject to the requirements of subsection 2 only if:
 - a. The laws of the impaired insurer's state of domicile provide that until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses thereof and interest on all such payments and expenses, shall have been repaid to the guaranty associations or a plan of repayment by the impaired insurer shall have been approved by the guaranty associations:
 - (1) The delinquency proceeding shall not be dismissed;
 - (2) Neither the impaired insurer nor its assets shall be returned to the control of its shareholders or private management;
 - (3) It shall not be permitted to solicit or accept new business or have any suspended or revoked license restored;
 - b. If the impaired insurer is a domestic insurer, it has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or
 - c. If the impaired insurer is a foreign or alien insurer,
 - (1) It has been prohibited from soliciting or accepting new business in this state;
 - (2) Its certificate of authority has been suspended or revoked in this state;
 - (3) A petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state; and
 - d. With respect only to life and health insurance policies, provide benefits and coverage in accordance with subsection 4.
4. When proceeding under subdivision b of subsection 2 or subdivision d of subsection 3, the association shall, with respect to only life and health insurance policies:
 - a. Assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and

renewability, that would have been payable under the policies of the insolvent insurer, for claims incurred:

- (1) With respect to group policies, not later than the earlier of the next renewal date under such policies or contracts or forty-five days, but in no event less than thirty days, after the date on which the association becomes obligated with respect to such policies.
 - (2) With respect to individual policies, not later than the earlier of the next renewal date, if any, under such policies or one year, but in no event less than thirty days, from the date on which the association becomes obligated with respect to such policies.
- b. Make diligent efforts to provide all known insureds or group policyholders with respect to group policies thirty days notice of the termination of the benefits provided.
- c. With respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subdivision d, if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.
- d. In providing the substitute coverage required under subdivision c, the association may offer either to reissue the terminated coverage or to issue an alternative policy.
- (1) Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.
 - (2) The association may reinsure any alternative or reissued policy.
- e. Alternative policies adopted by the association shall be subject to the approval of the commissioner. The association may adopt alternative policies of various types of future issuance without regard to any particular impairment or insolvency.
- f. Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not

imposition of such permanent policy or contract liens, to be in the public interest.

- b. Impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral or cash or policy loan value.
10. If the association fails to act within a reasonable period of time as provided in subsections 2, 3, and 4, the commissioner shall have the powers and duties of the association under this Act with respect to impaired or insolvent insurers.
11. The association may render assistance and advice to the commissioner, upon request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.
12. The association shall have standing to appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this chapter. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.
13. Any person receiving benefits under this chapter shall be deemed to have assigned the rights under, and any causes of action relating to, the covered policy or contract to the association to the extent of the benefits received because of this chapter, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of such rights and causes of action by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any right or benefits conferred by this chapter upon such person.
14. The subrogation rights of the association under this section shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this chapter.
15. In addition to subsections 13 and 14, the association shall have all common-law rights of subrogation and other equitable or legal remedy which would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to such policy or contract.

16. The association may:
 - a. Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this chapter;
 - b. Sue or be sued, including taking any legal actions necessary or properly to recover any unpaid assessments under section 26.1-38.1-06 and to settle claims or potential claims against it;
 - c. Borrow money to effect the purposes of this chapter; any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;
 - d. Employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this chapter;
 - e. Take such legal action as may be necessary to avoid payment of improper claims; and
 - f. Exercise, for the purposes of this chapter and to the extent approved by the commissioner, the power of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this chapter.
17. The association may join an organization of one or more state associations of similar purposes, to further the purposes and administer the powers and duties of the association.

26.1-38.1-06. Assessments.

1. For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty days after prior written notice to the member insurers and shall accrue interest at eighteen percent per annum on and after the due date.
2. There shall be two classes of assessment, as follows:
 - a. Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of section 26.1-38.1-09. Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.
 - b. Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association with regard to an impaired or insolvent insurer.
3. The amount of any class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If pro

rata, the board may provide that it be credited against future class B assessments. A non-pro rata assessment shall not exceed one hundred fifty dollars per member insurer in any one calendar year.

4. The amount of any class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.
5. Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.
6. Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this Act. Classification of assessments under subsection 2 and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.
7. The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.
8. The total of all assessments upon a member insurer for the life and annuity account and for each subaccount thereunder shall not in any one calendar year exceed two percent and for the health account shall not in any one calendar year exceed two percent of such insurer's average premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this chapter.
9. The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

10. If a one percent assessment for any subaccount of the life and annuity account in any one year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection 4, the board shall assess all subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subsection 8 above.
11. The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses.
12. It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance within the scope of this chapter, to consider the amount reasonably necessary to meet its assessment obligations under this chapter.
13. The association shall issue to each insurer paying an assessment under this chapter, other than a class A assessment, a certificate of contribution, in a form prescribed by the commissioner, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the commissioner may approve.

26.1-38.1-07. Plan of operation.

1. The association shall submit to the commissioner a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon the commissioner's written approval or after thirty days if he has not disapproved the plan of operation and any amendments thereto.
2. If the association fails to submit a suitable plan of operation within one hundred twenty days following the effective date of this Act or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.
3. All member insurers shall comply with the plan of operation.

4. The plan of operation shall, in addition to requirements enumerated elsewhere in this chapter:
 - a. Establish procedures for handling the assets of the association;
 - b. Establish the amount and method of reimbursing members of the board of directors under section 26.1-38.1-04;
 - c. Establish regular places and times for meetings including telephone conference calls of the board of directors;
 - d. Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;
 - e. Establish the procedures whereby elections for the board of directors will be made and submitted to the commissioner;
 - f. Establish any additional procedures for assessments under section 26.1-38.1-06;
 - g. Contain additional provisions necessary or proper for the execution of the powers and duties of the association.
5. The plan of operation may provide that any or all powers and duties of the association, except those under subsection 15 of section 26.1-38.1-05 and section 26.1-38.1-06, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this Act.

26.1-38.1-08. Duties and powers of the commissioner. In addition to the duties and powers enumerated elsewhere in this Act:

1. The commissioner shall:
 - a. Upon request of the board of directors, provide the association with a statement of premiums in this and any other appropriate states for each member insurer;
 - b. When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time; notice to the impaired insurer shall constitute notice to its shareholders, if any; the failure of the insurer to promptly comply with such demand shall not excuse the association from the performance of its powers and duties under this Act; and

- c. In any liquidation or rehabilitation proceedings involving a domestic insurer, be appointed as the liquidator or rehabilitator.
2. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars per month.
3. Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within sixty days of the final action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Any final action or order of the commissioner shall be subject to judicial review in a court of competent jurisdiction.
4. The liquidator, rehabilitator, or conservator of any impaired insurer may notify any interested persons of the effect of this Act.

26.1-38.1-09. Prevention of insolvencies. To aid in the detection and prevention of insurer insolvencies or impairments, it shall be the duty of the commissioner:

1. To notify the commissioners of all the other states, territories of the United States, and the District of Columbia when the commissioner takes any of the following actions against a member insurer:
 - a. Revokes its license;
 - b. Suspends its license; or
 - c. Makes any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors.

Such notice must be mailed to all commissioners within thirty days following the action taken or the date on which such action occurs.

2. To report to the board of directors when the commissioner has taken any of the actions set forth in subsection 1 or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner.

3. To report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that such company may be an impaired or insolvent insurer.
4. To furnish to the board of directors the national association of insurance commissioners insurance regulation information system ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners and the board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the commissioner or other lawful authority.
5. The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.
6. The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations shall not be considered public documents.
7. It shall be the duty of the board of directors, upon majority vote, to notify the commissioner of any information indicating any member insurer may be an impaired or insolvent insurer.
8. The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within thirty days of the receipt of such request, the commissioner shall begin such examination. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from complying with subsection 1.

The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

9. The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

10. The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing such information as it may have in its possession bearing on the history and causes of such insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer, and may adopt by reference any report prepared by such other associations.

26.1-38.1-10. Credits for assessments paid.

1. A member insurer may offset against its premium tax liability to this state an assessment described in subsection 13 of section 26.1-38.1-06 to the extent of twenty percent of the amount of such assessment for each of the five calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premiums tax liability for the year it ceases doing business.
2. Any sums which are acquired by refund, pursuant to subsection 11 of section 26.1-38.1-06, from the association by member insurers, and which have theretofore been offset against premium taxes as provided in subsection 1 above, shall be paid by such insurers to this state in such manner as the tax authorities may require. The association shall notify the commissioner that such refunds have been made.

26.1-38.1-11. Miscellaneous provisions.

1. Nothing in this Act shall be construed to reduce the liability for unpaid assessments of the insured of an impaired or insolvent insurer operating under a plan with assessment liability.
2. Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under section 26.1-38.1-05. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the association to render a report of its activities under section 26.1-38.1-11.
3. For the purpose of carrying out its obligations under this chapter, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to subsections 13, 14, and 15 of section 26.1-38.1-05. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue as covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies, as used in this subsection, are

that proportion of the assets which the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

4. Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, any policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of such insolvent insurer. In making such a determination, consideration shall be given to the welfare of the policyholders of the continuing or successor insurer.
5. No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under section 26.1-38.1-05 with respect to such insurer have been fully recovered by the association.
6. If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under such order shall have the right to recover on behalf of the insurer, from any affiliate that controlled its capital stock, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subsections 7 through 9.
7. No such distribution shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.
8. Any person who was an affiliate that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.
9. The maximum amount recoverable under this subsection shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.
10. If any person liable under subsection 7 is insolvent, all its affiliates that controlled it at the time the distribution was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

26.1-38.1-12. Examination of the association - Annual report. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner each year, not later than one hundred twenty days after the association's fiscal year, a financial report in a form approved by the commissioner and a report of its activities during the preceding fiscal year.

26.1-38.1-13. Tax exemptions. The association shall be exempt from payment of all fees and all taxes levied by this state on any of its subdivisions, except taxes levied on real property.

26.1-38.1-14. Immunity. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives, for any action or omission by them in the performance of their powers and duties under this Act. Such immunity shall extend to the participation of any organization of one or more other state associations of similar purposes and to any such organization and its agents or employees.

26.1-38.1-15. Stay of proceedings - Reopening default judgments. All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed sixty days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. As to judgment under any decision, order, verdict, or finding based on default, the association may apply to have such judgment set aside by the same court that made such judgment and shall be permitted to defend against such suit on the merits.

26.1-38.1-16. Prohibited advertisement of Insurance Guaranty Association Act in insurance sales - Notice to policyholders.

1. No person, including an insurer, agent, or affiliate of an insurer shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement, written or oral, which uses the existence of the insurance guaranty association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the North Dakota Life and Health Insurance Guaranty Association Act. Provided, however, that this section shall not apply to the North Dakota life and health insurance guaranty association or any other entity which does not sell or solicit insurance.
2. Within one hundred eighty days after the effective date of this Act, the association shall prepare a summary document describing the general purposes and current limitations of the Act and complying with subsection 3. This document should be submitted to the commissioner for approval. Sixty days after receiving such approval, no insurer may deliver a policy or contract described in subdivision a of subsection 2 of section 26.1-38.1-01 to a policyholder or contractholder unless the document is delivered to

the policyholder or contractholder to or at the time of delivery of the policy or contract except if subsection 4 applies. The document should also be available upon request by a policyholder. The distribution, delivery, or contents or interpretation of this document shall not mean that either the policy or contract or the holder thereof would be covered in the event of the impairment or insolvency of a member insurer. The document shall be revised by the association as amendments to the Act may require. Failure to receive this document does not give the policyholder, contractholder, certificate holder, or insured any greater rights than those stated in this chapter.

3. The document prepared under subsection 2 shall contain a clear and conspicuous disclaimer on its face. The commissioner shall adopt a rule establishing the form and content of the disclaimer. The disclaimer shall:
 - a. State the name and address of the life and health insurance guaranty association and insurance department;
 - b. Prominently warn the policyholder or contractholder that the North Dakota life and health guaranty association may not cover the policy, or, if coverage is available, it will be subject to substantial limitations, exclusions and conditioned on continued residence in this state;
 - c. State that the insurer and its agents are prohibited by law from using the existence of the North Dakota life and health guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;
 - d. Emphasize that the policyholder or contractholder should not rely on coverage under the North Dakota life and health guaranty association when selecting an insurer; and
 - e. Provide other information as directed by the commissioner.
4. No insurer or agent may deliver a policy or contract described in subsection 2 of section 26.1-38.1-01 and excluded under subdivision a of subsection 3 to section 26.1-38.1-01 from coverage under this Act unless the insurer or agent, prior to or at the time of delivery, gives the policyholder or contractholder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the North Dakota life and health guaranty association. The commissioner shall by rule specify the form and content of the notice.

SECTION 2. REPEAL. Chapter 26.1-38 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 374

HOUSE BILL NO. 1540
(Representatives Vander Vorst, Murphy, Belter)
(Senators Krauter, Axtman, Streibel)

PROPERTY AND CASUALTY INSURANCE BINDERS

AN ACT to create and enact a new section to chapter 26.1-39 of the North Dakota Century Code, relating to the use of property and casualty insurance binders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-39 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Temporary insurance - Use of binders. A binder or contract for temporary farm and personal lines of insurance may be made orally or in writing and is deemed to include all the terms of a standard fire insurance policy and all applicable endorsements as may be designated in the binder. However, the cancellation clause of the standard fire insurance policy and the clause specifying the hour of the day at which the insurance commences may be superseded by the express terms of the binder. A duly authorized binder must be accepted as evidence of insurance coverage required as a condition of financing the purchase of property, except that a mortgagee or lender is not required to accept a renewal or extension of the binder. Any insurance agent who has express authority to bind farm and personal lines of insurance coverage, and who orally agrees on behalf of an insurer to provide insurance coverage, shall, if requested, execute and deliver a written memorandum or binder containing the terms of the oral agreement to the insured within three business days from the time of the oral agreement.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 375

HOUSE BILL NO. 1155
(Representative Wald)
(Senator Lips)

UNINSURED AND UNDERINSURED MOTORIST COVERAGE

AN ACT to create and enact seven new sections to chapter 26.1-40 of the North Dakota Century Code, relating to uninsured and underinsured motorist coverage on motor vehicle liability insurance policies; and to repeal sections 26.1-40-13, 26.1-40-14, and 26.1-40-15 of the North Dakota Century Code, relating to uninsured and underinsured motorist coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions - Applicable to sections 1 through 7 of this Act. As used in sections 1 through 7 of this Act, and unless the context otherwise requires:

1. "Motor vehicle" means a vehicle, excluding motor vehicles weighing more than twenty thousand pounds, having two or more load-bearing wheels, of a kind required to be registered under the laws of this state relating to motor vehicles, designed primarily for operation upon the public streets, roads, and highways, and driven by power other than muscular power, and includes a trailer drawn by or attached to such a vehicle.
2. "Underinsured motor vehicle" means a motor vehicle for which there is a bodily injury liability insurance policy, or bond providing equivalent liability protection, in effect at the time of the accident, but the applicable limit of bodily injury liability of such policy or bond:
 - a. Is less than the applicable limit for underinsured motorist coverage under the insured's policy; or
 - b. Has been reduced by payments to other persons injured in the accident to an amount less than the limit for underinsured motorist coverage under the insured's policy.
3. "Uninsured motor vehicle" means a motor vehicle for which:
 - a. There is no bodily injury liability insurance policy, or bond providing equivalent liability protection, in effect at the time of the accident.
 - b. There is an applicable policy or bond, but the insurer or issuer thereof refuses to provide coverage, denies coverage, or

is or becomes insolvent as defined in subsection 4 of section 26.1-42-02.

- c. The identity of the owner or operator cannot be ascertained and the bodily injury, sickness, disease, or death of the insured is either caused by actual physical contact of such motor vehicle with the insured, or with a motor vehicle occupied by the insured, or is independently verified by a disinterested witness.
4. The terms "uninsured motor vehicle" and "underinsured motor vehicle" do not mean a motor vehicle:
 - a. Insured under the liability coverage of the same policy of which the uninsured motorist or underinsured motorist coverage is a part.
 - b. Owned by any governmental unit, political subdivision, or agency thereof.
 - c. Located for use as a residence or premises.
 - d. With respect to uninsured motorist coverage, a self-insured motor vehicle within the meaning of the financial or safety responsibility law of the state in which the motor vehicle is registered, or any similar state or federal law.
 - e. Operated by any person who is specifically excluded from coverage in the policy.

The term "underinsured motor vehicle" may not be construed to include an "uninsured motor vehicle".

SECTION 2. A new section to chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

Uninsured motorist coverage.

1. No motor vehicle liability insurance policy may be delivered, issued for delivery, or renewed in this state with respect to any specifically insured or identified motor vehicle registered, licensed, and principally garaged in this state unless uninsured motorist coverage is provided therein or supplemental thereto in limits set forth in section 39-16.1-11. Uninsured motorist coverage must pay compensatory damages which an insured is legally entitled to collect for bodily injury, sickness, or disease, including death resulting therefrom, or such insured, from the owner or operator of an uninsured motor vehicle arising out of the ownership, maintenance, or use of such uninsured motor vehicle.
2. At the request of a named insured, or applicant for insurance, the insurer providing uninsured motorist coverage shall also make available higher limits of uninsured motorist coverage in accordance with its rating plan and rules. The insurer need not provide uninsured motorist coverage limits in excess of the insured's bodily injury liability limits, or one hundred thousand dollars per person and three hundred thousand dollars per accident

(or if consistent with such rating plan and rules, a combined single limit equivalent of three hundred thousand dollars per accident), whichever is less.

3. The maximum liability of the uninsured motorist coverage is the lower of:
 - a. The amount of compensatory damages, established but not recovered by any agreement, settlement, or judgment with or for the person or organization legally liable for the bodily injury, sickness, disease, or death resulting therefrom; or
 - b. The limits of liability of the uninsured motorist coverage.

SECTION 3. A new section to chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

Underinsured motorist coverage.

1. The insurer shall also provide underinsured motorist coverage at limits equal to the limits of uninsured motorist coverage. Underinsured motorist coverage must pay compensatory damages which an insured is legally entitled to collect for bodily injury, sickness, disease, including death resulting therefrom, of such insured, from the owner or operator of an underinsured motor vehicle arising out of the ownership, maintenance, or use of such underinsured motor vehicle.
2. The maximum liability of the underinsured motorist coverage is the lowest of:
 - a. The amount of compensatory damages established but not recovered by any agreement, settlement, or judgment with or for the person or organization legally liable for the bodily injury, sickness, disease, or death resulting therefrom; or
 - b. The limits of liability of the underinsured motorist coverage.

SECTION 4. A new section to chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

Other insurance and priority of payment.

1. Any damages payable to or for any insured for uninsured or underinsured motorist coverage must be reduced by:
 - a. The amount paid, or payable under any workers compensation or other similar law, exclusive of nonoccupational disability benefits; and
 - b. Amounts paid or payable under any valid and collectible motor vehicle medical payments, personal injury protection insurance, or similar motor vehicle coverages.
2. Regardless of the number of motor vehicles involved, the number of persons covered or claims made, vehicles or premiums shown in the policy or premiums paid, the limit of liability for uninsured

motorist or underinsured motorist coverage may not be added to or stacked upon limits for such coverages applying to other motor vehicles to determine the amount of coverage available to an insured in any one accident.

3. If an insured is entitled to uninsured motorist or underinsured motorist coverage under more than one policy, the maximum amount such insured may recover may not exceed the highest limit of such coverage provided for any one vehicle under any one policy. If more than one policy applies, the following order of priority applies:
 - a. A policy covering a motor vehicle occupied by the injured person at the time of the accident;
 - b. A policy covering a motor vehicle not involved in the accident under which the injured person is a named insured;
 - c. A policy covering a motor vehicle not involved in the accident under which the injured person is an insured other than a named insured.

Coverage available under a lower priority policy applies only to the extent it exceeds the coverage of a higher priority policy.

SECTION 5. A new section to chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reimbursement and subrogation.

1. In the event of payment under uninsured or underinsured motorist coverage, the insurer making payment to the extent of the payment is entitled to the proceeds of any agreement, settlement, or judgment resulting from the exercise of any rights of recovery of such insured for compensatory damages or be entitled to exercise a right of subrogation against any person or organization legally responsible for the bodily injury, sickness, disease or death for which such payment is made.
2. No insurer providing underinsured motorist coverage has a right of subrogation against an underinsured motorist where the insurer has been provided with a written notice in advance of an agreement, settlement, or judgment between its insured and the underinsured motorist, and the insurer fails to advance a payment to the insured in an amount equal to the tentative agreement or settlement within thirty days following receipt of such notice. An insurer advancing such payment has full rights of subrogation.
3. Whenever an insurer makes payment under uninsured or underinsured motorist coverages because of an insurer insolvency, as defined in subsection 4 of section 26.1-42-03, the paying insurer's rights of reimbursement and subrogation do not include any rights of recovery against the insured of the insolvent insurer, nor against the North Dakota guaranty fund, except for the amount which is in excess of the limits of liability of the policy of the insolvent insurer.

SECTION 6. A new section to chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

Limitations. The uninsured and underinsured coverages provided for in sections 1 through 7 of this Act do not apply to bodily injury, sickness, disease, or death resulting therefrom of an insured:

1. While occupying a motor vehicle owned by, furnished or available for the regular use of the insured, a resident spouse or resident relative, if such motor vehicle is not described in the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of the policy;
2. While operating or occupying a motor vehicle without the specific permission of the owner thereof, or without a reasonable belief that the insured is entitled to do so;
3. For damages for pain, suffering, mental anguish, inconvenience, or other noneconomic loss which could not have been recovered had the owner or operator of the motor vehicle responsible for such loss maintained the security required under any applicable state no-fault law;
4. For punitive, exemplary, or other noncompensatory damages;
5. With respect to which the applicable statute of limitations has expired on the insured's claim against the uninsured or underinsured motorist;
6. Until the limits of all bodily injury liability policies and bonds that apply have been exhausted by payment of settlements or judgments, or such limits or the remaining part of them have been offered to the insured in writing;
7. Where the insured shall, without the written consent of the insurer, make any agreement or settlement with any person who may be legally liable therefor, if such agreement adversely affects the rights of the insurer. The insurer is not bound by any agreement or settlement without its prior knowledge and consent. This limitation does not apply to underinsured motorist coverage where the insured has advised the insurer, in compliance with subsection 2 of section 5 of this Act, and the insurer has failed to advance the required payment to protect its right of reimbursement and subrogation; and
8. If the insured has failed to report the accident to the proper law enforcement authorities as soon as practicable.

SECTION 7. A new section to chapter 26.1-40 of the North Dakota Century Code is hereby created and enacted to read as follows:

General provisions.

1. After selection of limits by a named insured or applicant for insurance, the insurer or any of its affiliates is not required to notify any insured in any renewal, reinstatement, substitute, amended, or replacement policy as to the availability of optional

limits. Such selection by a named insured or an applicant is valid for all insureds under the policy. The insured may make, subject to the limitations expressed in sections 1 through 7 of this Act, a request for additional coverage or coverage more extensive than that provided on a prior policy.

2. No insurer is required to offer, provide, or make available coverage conforming to sections 1 through 7 of this Act in connection with any excess policy, umbrella policy, or any other policy which does not provide primary motor vehicle insurance for liabilities arising out of the ownership, maintenance, operation, or use of a specifically insured motor vehicle.
3. Notwithstanding any other provision of sections 1 through 7 of this Act, an insurer may make underinsured motorist coverage a part of uninsured motorist coverage.
4. Notwithstanding any other provision of sections 1 through 7 of this Act or other laws of this state, a motor vehicle liability insurance policy may provide as to uninsured and underinsured motorist coverage, that any dispute with respect to issues of liability and damages may be submitted to binding arbitration if both parties agree. Such policy may also provide that coverage questions are not subject to arbitration.
5. Nothing in sections 1 through 7 of this Act may be construed to prevent an insurer from offering, making available, or providing coverage terms and conditions more favorable to its insured or limits higher than are required by sections 1 through 7 of this Act.

SECTION 8. REPEAL. Sections 26.1-40-13, 26.1-40-14, and 26.1-40-15 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved April 15, 1989
Filed April 17, 1989

CHAPTER 376

SENATE BILL NO. 2098
(Committee on Industry, Business and Labor)
(At the request of the Commissioner of Insurance)

AUTO LIABILITY INSURANCE RENTAL AUTO COVERAGE

AN ACT to require motor vehicle liability insurance policies for private passenger automobiles to include property damage coverage for rented automobiles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Motor vehicle liability policy - Rental vehicles covered.

1. Every motor vehicle liability insurance policy, as that term is defined in section 39-16.1-11, covering private passenger motor vehicles must provide that all of the obligation for damage and loss of use to a rented vehicle will be covered by the property damage liability portion of the policy. The obligation of the policy must not be contingent on fault or negligence of the insured.
2. A vehicle is rented for purposes of this section if the vehicle is rented under an agreement for thirty continuous days or less.
3. The policy or certificate issued by the insurer must inform the insured of the application of the insurance policy to rental vehicles and that the insured may not need to purchase additional coverage from the rental company.
4. If an insured has two or more vehicles covered by a plan or plans of liability insurance containing the rented motor vehicle coverage required under subsection 1, the insured may select the policy that the insured wishes to collect from and the insurer that issued that plan is entitled to a pro rata contribution from any other plan or insurers based upon the property damage limits of liability. If the person renting the motor vehicle is also covered by that person's employer's insurance policy or the employer's automobile self-insurance plan, the insurer or obligor under the employer's policy or self-insurance plan has primary responsibility to pay claims arising from use of the rented vehicle.
5. A notice advising the insured of rental vehicle coverage must be given by the insurer to each current insured with their first renewal notice following the effective date of this Act. The notice must be approved by the commissioner of insurance. The commissioner may specify the form of the notice.

6. A rental car company may not require as a condition to its rental contract that the renter make a deposit for a prior payment of damage to the rented vehicle or loss of use of that vehicle.
7. For each day a damaged vehicle is out of service because of damage to the vehicle while rented to others, the rental car company is entitled to collect sixty percent of the daily rental fee applicable to the contract in force when the car was damaged, but not to exceed fifteen days.

Approved April 6, 1989

Filed April 7, 1989

CHAPTER 377

HOUSE BILL NO. 1409
(Tollefson, Wald)

EXCESS NO-FAULT BENEFITS

AN ACT to amend and reenact sections 26.1-41-04 and 26.1-41-14 of the North Dakota Century Code, relating to optional excess no-fault benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-41-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-41-04. Optional excess no-fault benefits. Each basic no-fault insurer of the owner of a secured motor vehicle shall also make available optional excess no-fault benefits for excess economic loss commencing upon the exhaustion of basic no-fault benefits, up to a total of eighty thousand dollars in no-fault benefits for accidental bodily injury to any one person in any one accident, including an accident where the person who purchased the optional excess no-fault benefits or that person's relative is injured in a motor vehicle not owned by the insured or as a pedestrian. A basic no-fault insurer may also offer benefits and limits other than those prescribed in this section, and a basic no-fault insurer may incorporate in optional excess no-fault coverage the terms, conditions, and exclusions as may be consistent with the premiums charged. The amounts payable under optional excess no-fault benefits may be duplicative of benefits received from any collateral sources or may be written in excess of such collateral source benefits, or may provide for reasonable waiting period, deductibles, or coinsurance provisions. The optional excess no-fault benefits of a basic no-fault insurer may provide for subrogation to the injured person's right of recovery against any responsible third party.

SECTION 2. AMENDMENT. Section 26.1-41-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

26.1-41-14. Stacking of basic no-fault benefits prohibited. When an injured person is provided basic no-fault benefits by an insurance policy issued in compliance with this chapter, the injured person is covered only to the extent of the basic no-fault benefits provided on the secured motor vehicle involved in the accident and the optional excess no-fault benefits purchased by the injured person, or a relative of the injured person, on a secured motor vehicle, if any, in excess of the basic no-fault benefits provided on the secured motor vehicle involved in the accident. If any person is injured while occupying an unsecured motor vehicle, basic no-fault benefits are only available to the extent of the applicable basic no-fault benefits provided to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle. In either instance, basic no-fault benefits on any secured motor vehicle may not be added or stacked upon basic no-fault benefits available from any other source.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 378

HOUSE BILL NO. 1467
(Tollefson, Wald)

NO-FAULT INSURANCE STATUTE OF LIMITATIONS

AN ACT to amend and reenact subsections 1 and 2 of section 26.1-41-19 of the North Dakota Century Code, relating to the statute of limitations for no-fault insurance claims.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 26.1-41-19 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. If no basic or optional excess no-fault benefits have been paid for loss, an action for the benefits may be commenced not later than two years after the injured person suffers the loss and either knows, or in the exercise of reasonable diligence should know, that the loss was caused by the accident, or not later than four years after the accident, whichever is earlier. If basic or optional excess no-fault benefits have been paid for loss, an action for recovery of further benefits for the loss by either the same or another claimant, may be commenced not later than ~~two~~ four years after the last payment of benefits.
2. If no basic or optional excess no-fault benefits have been paid to the decedent or dependent survivors, an action for benefits for survivors' income loss and replacement services loss and funeral and burial expenses may be commenced not later than ~~one year~~ two years after the death or ~~four~~ six years after the accident from which death results, whichever is earlier. If survivors' income loss and replacement services loss benefits have been paid to any dependent survivor, an action for recovery of further survivors' income loss or replacement services loss benefits by either the same or another claimant may be commenced not later than ~~two~~ six years after the last payment of benefits. If basic or optional excess no-fault benefits have been paid for loss suffered by an injured person before the injured person's death resulting from the injury, an action for recovery of survivors' income loss or replacement services loss benefits may be commenced not later than ~~one year~~ two years after the death or ~~four~~ six years after the last payment of benefits, whichever is earlier.

Approved March 21, 1989
Filed March 23, 1989

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 379

HOUSE BILL NO. 1066
(Kretschmar)

TEMPORARY COURT OF APPEALS

AN ACT to amend and reenact section 15 of chapter 374 of the 1987 Session Laws of North Dakota, relating to the expiration date for legislation creating a temporary court of appeals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15 of chapter 374 of the 1987 Session Laws is hereby amended and reenacted to read as follows:

SECTION 15. EXPIRATION DATE. This Act is effective through January 1, ~~1990~~ 1994, and after that date is ineffective.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 380

HOUSE BILL NO. 1061
(Legislative Council)
(Interim Law Enforcement Committee)

COUNTY AND CITY CRIME VICTIM PROGRAMS

AN ACT to provide counties and cities the option of funding crime victim and witness programs through fees assessed as part of criminal sentences.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Fee assessments for funding crime victim and witness programs.

1. The governing body of a county may, by resolution, authorize a county judge to assess a fee under subsection 3 of not more than twenty-five dollars as part of a sentence imposed on a defendant who pleads guilty to or is convicted of a criminal offense or of violating a municipal ordinance for which the maximum penalty that may be imposed by law for the offense or violation includes imprisonment.
2. The governing body of a city may, by ordinance, authorize a municipal judge to assess a fee under subsection 3 of not more than twenty-five dollars as part of a sentence imposed on a defendant who pleads guilty to or is convicted of violating a municipal ordinance for which the maximum penalty that may be imposed under the ordinance for the violation includes imprisonment.
3. The governing body of the county or city may determine the amount of the fee to be assessed in all cases or it may authorize the county or municipal judge to determine the amount of the fee to be assessed in each case. The fee assessed under this section is in addition to any fine, penalty, costs, or administrative fee prescribed by law. The county or municipal judge may assess the fee when sentence is imposed or when sentence is suspended or imposition of sentence is deferred, unless the defendant is indigent and unable to pay the fee. All fees paid to a county or municipal court under this section must be deposited monthly in the county or city treasury for allocation by the governing body of the county or city to one or more of the following programs as determined by the governing body:
 - a. A private, nonprofit domestic violence or sexual assault program.
 - b. A victim and witness advocacy program of which the primary function is to provide direct services to victims of and witnesses to crime.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 381

HOUSE BILL NO. 1270
(Enget, Murphy)

STATE AND TRIBAL COURT JUDGMENTS

AN ACT to provide for the reciprocal recognition of certain state and tribal court judgments, decrees, and orders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Reciprocal recognition of certain state and tribal court judgments, decrees, and orders - Conditions. The district courts and county courts shall recognize and cause to be enforced any judgment, decree, or order of the tribal court of the Three Affiliated Tribes of the Fort Berthold Reservation in any case involving the dissolution of marriage, the distribution of property upon divorce, child custody, adoption, an adult abuse protection order, or an adjudication of the delinquency, dependency, or neglect of Indian children if the tribal court had jurisdiction over the subject matter of the judgment, decree, or order. The tribal court judgment, decree, or order must be rendered by a judge who is a graduate of an accredited law school and holds a current valid license to practice law in at least one state. A state court may inquire as to the facts of the case or tribal law only to the extent necessary to determine whether the tribal court had jurisdiction over the subject matter of the judgment, decree, or order and personal jurisdiction over the parties to the action. Recognition and enforcement of tribal court judgments, decrees, and orders under this section is conditioned upon recognition and enforcement of state court judgments, decrees, and orders by the tribal court of the Three Affiliated Tribes and tribal law enforcement agencies under the same limitations provided by this section for recognition and enforcement of tribal court judgments, decrees, and orders by state courts.

Approved March 15, 1989
Filed March 15, 1989

CHAPTER 382

SENATE BILL NO. 2468
(Senator Satrom)
(Representatives Wentz, Kretschmar)

SUPREME COURT AND DISTRICT COURT PERSONNEL

AN ACT to amend and reenact sections 27-02-05.1, 27-03-01, subsection 1 of section 27-05-30, sections 27-06-01 and 27-20-05 of the North Dakota Century Code, relating to the status of supreme court and district court personnel.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-02-05.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-02-05.1. Administration by supreme court. The supreme court shall have and exercise administrative supervision over all courts of this state and the judges, justices, or magistrates of such courts under such rules and procedures as it shall from time to time prescribe. The supreme court shall provide to the extent it deems necessary or desirable, rules for:

1. Administrative supervision by the supreme court of all courts.
2. Administrative practice and procedure in all courts, including:
 - a. The required filing by all courts of all reports deemed necessary by the supreme court; and
 - b. The establishment of uniform standards and procedures for the effective management of court records.

All judges, clerks of court, and other officers or employees of the courts and of offices related to and serving the courts shall comply with all administrative practice and procedure rules promulgated by the supreme court.

3. Personnel policies, procedures, qualifications, duties, and compensation for court personnel.
4. Uniform financial accounting procedures to be followed by all judicial officers and employees designated to receive and transmit fees, fines, costs, and other moneys. The court shall not establish any accounting procedures which conflict with those established by the state auditor for county agencies.
- ← 5. The transfer of any matter to any proper court when the jurisdiction of any court has been improvidently invoked.

- 5- 6. Withdrawal of any case or other matter pending before any judge and to reassign the proceeding or case to another judge, when, in the opinion of the supreme court, the withdrawal and reassignment should be made in order to expedite and promote justice.

SECTION 2. AMENDMENT. Section 27-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-03-01. Appointment of clerk of supreme court. ~~There shall be a clerk of the supreme court who shall be appointed by the judges thereof and who shall hold his office during the pleasure of such judges. The supreme court shall appoint a clerk of the supreme court to perform duties assigned by the court. The court shall establish the clerk's salary within the amount appropriated for salaries by the legislative assembly.~~

SECTION 3. AMENDMENT. Subsection 1 of section 27-05-30 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. There may be appointed in each judicial district, by the judges of district court having jurisdiction therein, one or more referees to serve ~~at the pleasure of the appointing judges,~~ on a full-time or part-time basis. A referee is entitled to receive a salary within the limits of legislative appropriation.

SECTION 4. AMENDMENT. Section 27-06-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-06-01. District court reporter - Appointment, oath, ~~term,~~ substitutes, qualifications. Each district judge shall appoint a qualified shorthand reporter to the office of court reporter. The order of appointment shall be filed in the office of the clerk and entered upon the records of the court in each county of the district. The person so appointed shall take and subscribe the oath required of other civil officers and shall file the same in the office of the secretary of state. The reporter shall hold office and discharge the duties thereof in person ~~until the order of appointment is revoked, or until another person is appointed to the office.~~ If the reporter shall be incapacitated from acting, the judge may appoint some other qualified shorthand reporter to act, whose notes, transcripts, and certificates shall have the same force and effect as though made by the official reporter, but the certificates made by the person shall be under oath. A qualified shorthand reporter shall be a person who is the holder of a registered professional reporter certificate issued by the national shorthand reporters association or an official shorthand reporter appointed on or before July 1, 1979.

SECTION 5. AMENDMENT. Section 27-20-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-05. Juvenile court personnel.

1. The ~~supreme court may appoint one or more juvenile supervisors who shall serve at the pleasure of the court. Juvenile supervisors have the powers and duties stated in section 27-20-06. If more than one juvenile supervisor is appointed, one may be designated by the court as the chief juvenile supervisor or director of court services, who shall be responsible for the administration of~~

juvenile court services under the direction of the court provide for the appointment by administrative and personnel rules of the necessary juvenile court officers, clerical personnel, and other specialized personnel within the limits of legislative appropriations to assist the court in carrying out its juvenile probation and supervisor functions.

2. Each juvenile supervisor shall receive as full compensation for his services an annual salary as may be fixed from time to time by the judge who appointed him; or by his successor. Such salary shall be within the limits of legislative appropriations and payable in equal monthly installments by the state. In addition, the juvenile supervisor shall be paid reasonable travel expenses for mileage and subsistence necessarily incurred in the discharge of his duties, in accordance with the amount allowed to other state employees.
3. A judge of the juvenile court, in his discretion, may provide for the employment of probation officers, clerical, and other specialized personnel under the direction and supervision of the judge, to assist the court and juvenile supervisors in carrying out the provisions of this chapter. Personnel so employed shall receive as full compensation for their services such amount as may be fixed and approved from time to time by the judge of the juvenile court assisted, within the limits of legislative appropriations, together with reasonable travel expenses, in the manner and subject to the limitations applicable to juvenile supervisors. Detention center facilities and personnel shall be funded by the county.
4. 3. All salaries, per diem, and other compensation payable to juvenile court personnel, all necessary books, forms, stationery, office supplies and equipment, postage, telephone, travel, and other necessary expenses incurred in carrying out the provisions of this chapter shall be borne by the state, except for suitable quarters for conducting official business and lights and fuel which shall be funded by the county and except as provided by subsection 1 of section 27-20-49.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 383

HOUSE BILL NO. 1120
(Committee on Judiciary)
(At the request of the Supreme Court)

COUNTY COURT JURY BAILIFFS

AN ACT to amend and reenact section 27-07.1-16 of the North Dakota Century Code, relating to bailiffs of the county court; and to repeal section 27-06-09 of the North Dakota Century Code, relating to compensation for bailiffs of district court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-07.1-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-07.1-16. ~~Bailiffs~~ Jury bailiffs of county courts - Appointment, ~~terms, powers,~~ compensation. The judge of a county court may ~~appoint~~ employ one or more competent ~~persons as jury bailiffs of~~ for the court. The jury ~~bailiffs hold office at the pleasure of the judge, have the same powers as a peace officer, and are entitled to receive for their services an amount which equals the compensation and mileage which is provided for jurors for required attendance at sessions of the district or county court under the provisions of section 27-09.1-14 must be compensated by the county at the rate set by the supreme court for district court jury bailiffs.~~

SECTION 2. REPEAL. Section 27-06-09 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 384

SENATE BILL NO. 2406
(Senators Stenehjem, Heinrich)
(Representatives Stenehjem, Rydell, Gates)

UNRULY CHILD AND ALCOHOL

AN ACT to amend and reenact subsection 10 of section 27-20-02 of the North Dakota Century Code, relating to the definition of an unruly child under the Uniform Juvenile Court Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 10 of section 27-20-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. "Unruly child" means a child who:

- a. Is habitually and without justification truant from school;
- b. Is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; or who is willfully in a situation dangerous or injurious to the health, safety, or morals of himself or others;
- c. Has committed an offense applicable only to a child;
- d. Has committed a noncriminal traffic offense without ever having been issued an operator's license or permit if one was required; or
- e. Has committed an offense in violation of section 39-08-18 or purchased, attempted to purchase, possessed, or consumed alcoholic beverages; and
- f. In any of the foregoing instances is in need of treatment or rehabilitation.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 385

SENATE BILL NO. 2060
(Legislative Council)
(Interim Law Enforcement Committee)

ALLEGED SEX OFFENDER REMOVAL FROM HOME

AN ACT to amend and reenact section 27-20-17 of the North Dakota Century Code, relating to the removal of an alleged sexual offender from the residence of a child as a condition of release of the child from shelter care under the Uniform Juvenile Court Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-17. Release from detention or shelter care - Hearing - Conditions of release.

1. If a child is brought before the court or delivered to a detention or shelter care facility designated by the court, the juvenile supervisor, the intake officer, or other authorized officer of the court shall immediately make an investigation and release the child unless it appears that his the child's detention or shelter care is warranted or required under section 27-20-14.
2. If he the child is not so released, a petition under section 27-20-21 shall must be promptly made and presented to the court. A judge or referee shall hold a detention or shelter care hearing promptly and not later than ninety-six hours after the child is placed in detention or shelter care to determine whether there is probable cause to believe the child has committed the delinquent or unruly acts alleged, or the child is deprived and whether his the child's detention or shelter care is required under section 27-20-14. Reasonable notice thereof, either oral or written, stating the time, place, and purpose of the detention or shelter care hearing shall must be given to the child and, if they can be found, to his the child's parents, guardian, or other custodian. As a condition to the child's release from shelter care, the court may order a parent, guardian, custodian, or any other member of the household in which the child resides to vacate the child's residence if probable cause exists to believe that the parent, guardian, custodian, or other member of the household has committed a sexual offense with or against the child, pursuant to sections 12.1-20-03 through 12.1-20-07 or section 12.1-20-11, and the presence of the alleged sexual offender in the child's residence presents a danger to the child's life or physical, emotional, or mental health. Prior to the commencement of the hearing, the court shall inform the parties of their right to counsel and to appointed counsel if they are needy persons, and of the child's right to

remain silent with respect to any allegations of delinquency or unruly conduct.

3. If the child is not ~~so~~ released and a parent, guardian, or custodian has not been notified of the hearing, did not appear or waive appearance at the hearing, and files ~~his~~ an affidavit showing these facts, the court shall rehear the matter without unnecessary delay and order ~~his~~ the child's release, unless it appears from the hearing that the child's detention or shelter care is required under section 27-20-14.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 386

SENATE BILL NO. 2295
(Senators Olson, J. Meyer)
(Representative Rydell)

UNIFORM JUVENILE COURT ACT PLACEMENTS

AN ACT to amend and reenact section 27-20-36 of the North Dakota Century Code, relating to limitations of time on orders of disposition for placement of minors in foster care under the Uniform Juvenile Court Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-20-36 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-36. Limitations of time on orders of disposition.

1. An order terminating parental rights is without limit as to duration.
2. An order of disposition committing a delinquent or unruly child to the state industrial school continues in force for two years, excluding any period of time the child is on parole from the institution, or until the child is sooner discharged by the institution. The court which made the order may extend its duration for additional two-year periods subject to like discharge, if:
 - a. A hearing is held upon motion of the institution, or on the court's own motion, prior to the expiration of the order;
 - b. Reasonable notice of the hearing and an opportunity to be heard are given to the child and the parent, guardian, or other custodian; and
 - c. The court finds that the extension is necessary for the treatment or rehabilitation of the child.
3. An order of disposition pursuant to which a child is placed in foster care continues in force for not more than eighteen months. Any other order of disposition continues in force for not more than two years.
4. Except as provided in subsection 1, the court may sooner terminate an order of disposition or extend its duration for further periods. An order of extension may be made if:
 - a. A hearing is held prior to the expiration of the order upon motion of a party or on the court's own motion;

- b. Reasonable notice of the hearing and opportunity to be heard are given to the parties affected;
 - c. The court finds that the extension is necessary to accomplish the purposes of the order extended; and
 - d. The extension does not exceed eighteen months from the expiration of an order limited by subsection 3 or two years from the expiration of any other limited order. However, the court may order that the child permanently remain in foster care with a specified care giver and that the duration of the order be left to the determination of the court if the court determines that:
 - (1) All reasonable efforts have been made to reunite the child with the child's family;
 - (2) The deprivation is likely to continue;
 - (3) With respect to a child under the age of ten, termination of parental rights and subsequent adoption would not be in the best interests of the child; and
 - (4) The placement of the child in permanent foster care is in the best interests of the child.
5. Except as provided in subsection 2, the court may terminate an order of disposition or extension prior to its expiration, on or without an application of a party, if it appears to the court that the purposes of the order have been accomplished. If a party may be adversely affected by the order of termination the order may be made only after reasonable notice and opportunity to be heard have been given to ~~him~~ the party.
6. Except as provided in subsection 1, when the child attains the age of twenty years, all orders affecting ~~him~~ the child then in force terminate and ~~he~~ the child is discharged from further obligation or control.
7. If an order of disposition is made with respect to a child under the age of ten years pursuant to which the child is removed from the care, custody, and control of ~~his~~ the child's parent, guardian, or other custodian without terminating parental rights and the parent and child relationship, the court, before extending the duration of the order, shall determine upon the extension hearing whether the child is adoptable and whether termination of those rights and that relationship is warranted under section 27-20-44 and is in the best interest of the child. In that case the notice of the extension hearing must also inform the parties affected that the court will determine whether the child is adoptable and whether termination of their parental rights and the parent and child relationship is warranted and in the best interest of the child and that a further order of disposition may be made by the court placing ~~said~~ the child with a view to adoption. If the court determines that the child is adoptable and that termination of parental rights and the parent and child relationship is warranted and is in the best interest of the child, the court shall make a further order of disposition terminating those rights and that relationship and committing the child under section 27-20-47.

CHAPTER 387

SENATE BILL NO. 2298
(Senators Stromme, Hanson, Tallackson)
(Representative Aarsvold)

CHILD EXAMINATION AND TREATMENT COSTS

AN ACT to amend and reenact subsections 1 and 2 of section 27-20-49 of the North Dakota Century Code, relating to payment by the state of the costs of transportation necessary for court-ordered medical examinations and treatment of a child.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsections 1 and 2 of section 27-20-49 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The following expenses shall be a charge upon the funds of the county upon certification thereof by the court:
 - a. The cost of medical and other examinations and treatment, ~~including any necessary transportation~~, of a child ordered by the court.
 - b. The cost of care and support of a child committed by the court to the legal custody of a public agency other than an institution for delinquent children, or to a private agency or individual other than a parent.
 - c. The cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court unless the child is in the legal custody of a state agency.
2. The following expenses shall be expenses of the state:
 - a. Reasonable compensation for services and related expenses of counsel appointed by the court for a party.
 - b. Reasonable compensation for a guardian ad litem.
 - c. The expense of service of summons, notices, subpoenas, travel expense of witnesses, and other like expenses incurred in the proceedings under this chapter.
 - d. The cost of any necessary transportation for medical and other examinations and treatment of a child ordered by the court if the child is in the legal custody of a state agency in which case the cost must be borne by that state agency at the state mileage rate excluding meals and lodging.

Approved April 14, 1989
Filed April 17, 1989

* NOTE: Section 27-20-49 was also amended by section 1 of Senate Bill No. 2236, chapter 388.

CHAPTER 388

SENATE BILL NO. 2336
(Senators Waldera, D. Meyer)
(Representatives Goetz, Wald)

COURT WITNESS AND INTERPRETER COSTS

AN ACT to amend and reenact section 27-20-49, subsection 1 of section 28-33-02, sections 28-33-05, 31-01-16, and 31-01-18 of the North Dakota Century Code, relating to payment of district court case witness fees and expenses and compensation and appointment of interpreters for deaf persons in judicial and administrative proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 27-20-49 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-49. Costs and expenses for care of child.

1. The following expenses ~~shall be~~ are a charge upon the funds of the county upon certification thereof by the court:
 - a. The cost of medical and other examinations and treatment, including any necessary transportation, of a child ordered by the court.
 - b. The cost of care and support of a child committed by the court to the legal custody of a public agency other than an institution for delinquent children, or to a private agency or individual other than a parent.
2. The ~~following expenses~~ supreme court shall ~~be expenses of the state:~~
 - a- ~~Reasonable~~ pay reasonable compensation for services and related expenses of counsel appointed by the court for a party-
 - b- ~~Reasonable and reasonable~~ compensation for a guardian ad litem.
 - c- The attorney general shall pay the expense of service of summons, notices, subpoenas, travel expense of witnesses, and other like expenses incurred in the proceedings under this chapter.
3. If, after due notice to the parents or other persons legally obligated to care for and support the child, and after affording them an opportunity to be heard, the court finds that they are financially able to pay all or part of the costs and expenses stated in subsection 1, and subdivisions a and b of expenses payable by the supreme court under subsection 2, the court may

* NOTE: Section 27-20-49 was also amended by section 1 of Senate Bill No. 2298, chapter 387.

order them to pay the same and prescribe the manner of payment. Unless otherwise ordered payment shall be made to the clerk of the juvenile court for remittance to the person to whom compensation is due, or if the costs and expenses have been paid by the county or the state to the county treasurer of the county or to the state treasurer.

SECTION 2. AMENDMENT. Subsection 1 of section 28-33-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. At all stages of any judicial or administrative proceedings ~~pursuant to chapter 28-32~~ in which a deaf person is a principal party in interest, the appointing authority shall appoint a qualified interpreter to interpret or to translate the proceedings to the deaf person and to interpret or translate ~~his~~ the person's testimony.

SECTION 3. AMENDMENT. Section 28-33-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-33-05. Compensation. An interpreter appointed under ~~the provisions of this chapter~~ shall be compensated by the appointing authority at a reasonable rate ~~to be determined by the appointing authority~~, including travel expenses. ~~Nothing in this~~ This section ~~shall be construed to does not~~ prevent any state department, board, commission, agency, or licensing authority or any political subdivision of the state from employing an interpreter on a full-time basis or under contract.

SECTION 4. AMENDMENT. Section 31-01-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

31-01-16. Compensation and mileage and travel expense of witness - County to pay fees except for district court fees in criminal action. A witness in a civil or criminal case is entitled to receive:

1. A sum of twenty-five dollars for each day necessarily in attendance before the district or county court or before any other court, board, or tribunal, except municipal court.
2. A sum for mileage and travel expense reimbursement equal to the reimbursement rates provided for state employees in sections 44-08-04 and 54-06-09.

In all criminal cases such witness fees and expenses on the part of the state must be paid out of the county treasury of the proper county except that in district court cases the attorney general shall pay prosecution witness fees and expenses, and the supreme court shall pay other witness fees for indigents and expenses must be paid by the state. In no event may prisoners. Prisoners may not be compensated as witnesses under ~~the provisions of this~~ section.

SECTION 5. AMENDMENT. Section 31-01-18 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

31-01-18. Expenses of witness paid by city, county, or state upon court order in criminal or municipal court action. When a person, as a

witness in a criminal or municipal court action, appears before a magistrate, grand jury, or court, upon a subpoena or in pursuance of an undertaking and it appears that ~~he~~ the person:

1. Has come from a place outside the county; or
2. Is poor and unable to pay the expenses of such attendance,

the court, if the attendance of the witness is upon a trial, by order upon its minutes, or in any other case, the judge, by a written order, may direct the state in district court cases, the county in county court cases, or the city in municipal court cases to pay the witness a reasonable sum to be specified in the order for the necessary expenses of the witness's attendance. Upon the production of the order or a certified copy thereof, the state, county, or city, to whichever entity the order is directed, must pay the witness the sum specified. In district court cases, the attorney general shall pay prosecution witness expenses and the supreme court shall pay other witness expenses.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 389

HOUSE BILL NO. 1590
(Sorensen)

APPOINTMENT OF JUDGES

AN ACT to amend and reenact sections 27-25-04 and 27-26-04 of the North Dakota Century Code, relating to filling a vacancy in the office of supreme, district, or county court judge; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 27-25-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-25-04. Governor to appoint or call special election. Within thirty days after receipt of the list of nominees, the governor shall do any of the following:

1. Fill the vacancy by appointment from the list of nominees submitted by the committee. The appointment ~~shall continue only until the next general election, when the office shall be filled by election for the remainder of the term~~ continues until the next general election, unless the next general election occurs within one year after the appointment, in which case the appointment continues until the following general election.
2. Return the list of nominees and direct the committee to reconvene.
3. Call a special election to fill the vacancy for the remainder of the term.

If the governor determines to call a special election to fill the vacancy, the governor shall issue a writ of election to the auditors of the counties in the district in which the district vacancy occurs commanding them to notify the boards of election in the counties to hold a special election at a time designated by the governor. If the governor determines to call a special election within sixty days of the time of the next general election, the special election shall be held at the same time as the general election.

SECTION 2. AMENDMENT. Section 27-26-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-26-04. Commissions to appoint or call special election.

1. Within thirty days after receipt of the list of nominees, the commissions affected shall do any of the following:
 - a. Fill the vacancy by appointment from the list of nominees submitted by the committee. The appointment ~~shall continue~~

only until the next general election; when the office shall be filled by election for the remainder of the term continues until the next general election, unless the next general election occurs within one year after the appointment, in which case the appointment continues until the following general election.

- b. Return the list of nominees and direct the committee to reconvene.
 - c. Call a special election to fill the vacancy for the remainder of the term. If a special election is called within sixty days of the time of the next general election, the special election shall be held at the same time as the general election.
2. Any action to fill a vacancy pursuant to this section must be approved by a majority of the members of each of the boards of county commissioners of the counties affected.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on the date that the proposed amendment to section 13 of article VI of the Constitution of North Dakota as contained in House Concurrent Resolution No. 3040, as agreed to by the fifty-first legislative assembly, is approved by the electors at the primary or general election in 1990.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 390

HOUSE BILL NO. 1598
(Representatives Dalrymple, Nicholas)
(Senators Freborg, Langley)

SEED MEDIATION BOARD

AN ACT to create and enact two new sections to chapter 4-09 of the North Dakota Century Code, relating to a state seed mediation board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 4-09 of the North Dakota Century Code are hereby created and enacted to read as follows:

State seed mediation board. The state seed mediation board consists of the commissioner of agriculture, the director of the agriculture extension service, the director of the North Dakota agricultural experiment station, the chairman of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the commissioner of agriculture, or their authorized designees.

Seed mediation board - Petition - Mediation hearing. A seed labeler and a seed customer shall petition the commissioner of agriculture in writing for a hearing to settle a dispute involving a seed transaction. The commissioner shall submit the dispute to the seed mediation board, and the board shall mediate the dispute upon payment by the parties of a sum determined by the board to be sufficient to reimburse the board for the expenses of the mediation process, including reasonable compensation of board members. The board, within thirty days after the hearing, shall make a nonbinding recommendation for the resolution of the dispute. Evidence presented to the board and any findings or recommendations by the board are admissible as evidence in any subsequent proceeding. The board shall adopt rules and procedures for mediation proceedings, including a formula for reimbursement by the parties of the expenses of the mediation process.

Approved March 22, 1989
Filed March 23, 1989

JUDICIAL PROCEDURE, CIVIL

CHAPTER 391

HOUSE BILL NO. 1078
(Shaft)

STATUTE OF LIMITATIONS DURING ABSENCE

AN ACT to amend and reenact section 28-01-32 of the North Dakota Century Code, relating to the statute of limitations when a person is absent from the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-01-32 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-01-32. Absence from state tolls limitations - Exception. If any person is out of this state at the time a claim for relief accrues against ~~him~~ that person, an action on such claim for relief may be commenced in this state at any time within the term limited in this chapter for the bringing of an action on such claim for relief after the return of such person into this state. If any person departs from and resides out of this state and remains continuously absent therefrom for the space of one year or more after a claim for relief has accrued against ~~him~~ that person, the time of ~~his~~ that person's absence may not be taken as any part of the time limited for the commencement of an action on such claim for relief. The provisions of this section, however, do not apply to the foreclosure of real estate mortgages by action or otherwise and do not apply if this state's courts have jurisdiction over a person during the person's absence.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 392

SENATE BILL NO. 2228

(Committee on State and Federal Government)

(At the request of the Public Employees Retirement System)

RETIREMENT BENEFITS UNDER DOMESTIC RELATIONS ORDERS

AN ACT to create and enact a new section to chapter 39-03.1 and a new section to chapter 54-52 of the North Dakota Century Code, relating to payment of retirement benefits in accordance with domestic relations orders under the highway patrolmen's retirement system and public employees retirement system; and to amend and reenact sections 28-22-03.1 and 28-22-19 of the North Dakota Century Code, relating to property exempt from judicial process.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 28-22-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-03.1. Additional absolute exemptions for residents. In addition to the exemptions from all attachment or process, levy and sale upon execution, and any other final process issued from any court, otherwise provided by law, a resident of the state may select:

1. In lieu of the homestead exemption, up to seven thousand five hundred dollars.
2. A motor vehicle exemption not to exceed one thousand two hundred dollars.
3. Pensions; annuity policies or plans; life insurance policies which, upon the death of the insured, would be payable to the spouse, children, or any relative of the insured dependent, or likely to be dependent, upon the insured for support and which have been in effect for a period of at least one year; individual retirement accounts; Keogh plans and simplified employee pension plans; and all other plans qualified under section 401 of the Internal Revenue Code [Pub. L. 83-591; 68A Stat. 134; 26 U.S.C. 401] and section 408 of the Internal Revenue Code [Pub. L. 93-406; 88 Stat. 959; 26 U.S.C. 408], and proceeds, surrender values, payments, and withdrawals from such pensions, policies, plans, and accounts, up to one hundred thousand dollars for each pension, policy, plan, and account with an aggregate limitation of two hundred thousand dollars for all pensions, policies, plans, and accounts. The dollar limit does not apply to the extent this property is reasonably necessary for the support of the resident and that resident's dependents, except that the pensions, policies, plans, and accounts or proceeds, surrender values, payments, and withdrawals are not exempt from enforcement of any order to pay

* NOTE: Section 28-22-03.1 was also amended by section 2 of House Bill No. 1096, chapter 224.

spousal support or child support, or a qualified domestic relations order pursuant to sections 3 and 4 of this Act. As used in this subsection, "reasonably necessary for the support" means required to meet present and future needs, as determined by the court after consideration of the resident's responsibilities and all the present and anticipated property and income of the resident, including that which is exempt.

4. The debtor's right to receive, or property that is traceable to:
 - a. A payment, not to exceed seven thousand five hundred dollars, on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
 - b. A payment, not to exceed seven thousand five hundred dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
 - c. A social security benefit, except that the benefit is not exempt for enforcement of any order for the support of a dependent child.
 - d. Veteran's disability pension benefits, not including military retirement pay, except that the benefits are not exempt from process levy or sale for enforcement of any order for the support of a dependent child.

* SECTION 2. AMENDMENT. Section 28-22-19 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-22-19. Exemptions from legal process - Public pensions, assistance, and awards. The following amounts are exempt from liability for debts of the person to or on account of whom the amounts are paid, and are not subject to seizure upon execution or other process:

1. All pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by sections 3 and 4 of this Act, a state agency, a political subdivision of the state, or a firemen's relief association for retirement, annuity, pension, disability benefit, or death benefit purposes.
2. All awards made pursuant to chapter 65-13 as reparations for victims of crimes.
3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.

SECTION 3. A new section to chapter 39-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Benefit payments to alternate payee under qualified domestic relations order.

* NOTE: Section 28-22-19 was also amended by section 3 of House Bill No. 1096, chapter 224.

1. The board shall pay retirement benefits in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to it to determine if the domestic relations order is qualified under this section and under rules established by the board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders. Upon determination that a domestic relations order is qualified, the board shall notify the contributor and the named alternate payee of its receipt of the qualified domestic relations order.
2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a contributor, is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of the benefits payable to the contributor. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise provided under the retirement system, or to provide increased benefits as determined on the basis of actuarial value. However, a qualified domestic relations order may require the payment of benefits at the early retirement date notwithstanding that the contributor has not terminated eligible employment. A qualified domestic relations order must specify:
 - a. The name and the last known mailing address of the contributor and the name and mailing address of each alternate payee covered by the order;
 - b. The amount or percentage of the contributor's benefits to be paid by the plan to each alternate payee;
 - c. The number of payments or period to which the order applies; and
 - d. Each retirement plan to which the order applies.

SECTION 4. A new section to chapter 54-52 of the North Dakota Century Code is hereby created and enacted to read as follows:

Benefit payments to alternate payee under qualified domestic relations order.

1. The board shall pay retirement benefits in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to it to determine if the domestic relations order is qualified under this section and under rules established by the board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders. Upon determination that a domestic relations order is qualified, the board shall notify the participating member and the named alternate payee of its receipt of the qualified domestic relations order.

2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a participating member, is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of the benefits payable to the participating member. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise provided under the public employees retirement system, or to provide increased benefits as determined on the basis of actuarial value. However, a qualified domestic relations order may require the payment of benefits at the early retirement date notwithstanding that the participating member has not terminated eligible employment. A qualified domestic relations order must specify:
- a. The name and the last known mailing address of the participating member and the name and mailing address of each alternate payee covered by the order;
 - b. The amount or percentage of the participating member's benefits to be paid by the plan to each alternate payee;
 - c. The number of payments or period to which the order applies; and
 - d. Each retirement plan to which the order applies.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 393

HOUSE BILL NO. 1051
(Legislative Council)
(Interim Judicial Process Committee)

MORTGAGE FORECLOSURE NOTICE OF SALE

AN ACT to amend and reenact section 28-23-04 of the North Dakota Century Code, relating to the notice of sale in mortgage foreclosure actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-23-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-23-04. Sale of real property - Notice of sale - Contents. Before any real property or interest therein taken on execution ~~shall~~ may be sold, the officer making ~~such the sale must~~ shall give public notice of the time and place ~~thereof, in the manner following of the sale:~~

1. If a newspaper is printed in the county where the real property to be sold is situated, ~~such the~~ notice must be given by advertisement in ~~some a~~ newspaper printed in ~~such the~~ county once a week for three successive weeks, the last publication to be at least ten days prior to the making of ~~such the~~ sale; and
2. In case no newspaper is printed in ~~such the~~ county, then the officer making the sale ~~must shall~~ cause ~~such the~~ advertisement to be made by posting a copy of ~~such the~~ advertisement on the outer door of the courthouse or building ~~wherein where~~ the district court of the county was last held, and in five other public places in the county.

Except for parties who have an ownership interest in the real property subject to foreclosure of a mortgage under chapter 32-19 or 32-19.1, the names of all defendants may be omitted from the public notice. If the names of the nonowner defendants are omitted, a copy of the public notice must be mailed to all defendants whose names are omitted at least ten days prior to the date of the sale. Service by mail is complete upon mailing. All sales made without notice as provided in this section must be set aside by the court to which the execution is returnable, upon motion to confirm the sale.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 394

HOUSE BILL NO. 1621
(Representatives Brokaw, Schindler, Gerntholz)
(Senators Hanson, Shea, Tallackson)

HOMESTEAD PROTECTION

AN ACT to provide farmers the right to redeem homesteads separately from other property; to amend and reenact section 28-23-07 of the North Dakota Century Code, relating to waivers of right to designate lots at execution sale; to repeal chapter 194 of the 1987 Session Laws of North Dakota, relating to redemption of separate known lots or parcels of property; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Declaration by legislative assembly. The legislative assembly declares that:

1. This state is suffering from a financial crisis in agriculture that affects the entire economic health of this state.
2. A large number of farm families are in economic distress and are being forced to leave their farms, abandon their investments, and move to other areas. This adversely affects the towns, business communities, and school districts in rural areas.
3. It is in the best interest of the state to protect farm families from the dislocation caused by the financial crisis in agriculture.
4. This Act is enacted pursuant to the police powers of the state in times of economic crisis and in accordance with section 22 of article XI of the Constitution of North Dakota, which requires the legislative assembly to adopt wholesome laws protecting homesteads.

SECTION 2. AMENDMENT. Section 28-23-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-23-07. Time and manner of sale - Designation of parcels or lots - Waiver in real estate mortgage of right to designate parcels or lots ineffective. All sales of property under execution must be made at public auction to the highest bidder, and conducted between the hours of nine o'clock a.m. and four o'clock p.m. After sufficient property has been sold to satisfy the execution no more ~~shall~~ may be sold. No sheriff or other officer, ~~nor his~~ or deputy of the sheriff or other officer, holding the execution or making the sale of property, either personal or real, ~~shall may~~ become a purchaser or be interested directly or indirectly in any purchase at ~~such the~~ sale, and every purchase so made ~~shall be considered~~ is fraudulent and void. ~~When~~ If the sale is of personal property capable of manual delivery, it must be within view of those who attend the sale and must be sold in ~~such parcels as are~~ likely to bring the highest price, and ~~when~~. If

the sale is of real property consisting of several known lots or parcels ~~they~~, each must be sold separately. No waiver contained in a real estate mortgage of the mortgagor's right to designate known lots or parcels is effective for purposes of limiting a mortgagor's right to designate homestead property under section 4 of this Act. The judgment debtor, if present at the sale or under section 4 of this Act, may direct the order in which property, real or personal, ~~shall~~ must be sold, ~~when such~~ if the property consists of ~~several~~ known lots or parcels or of articles which can be sold to advantage separately, and the sheriff or other officer must follow ~~such~~ those directions.

SECTION 3. Separate redemption of homestead - Notice. In any proceeding to foreclose any mortgage upon agricultural property as defined in subsection 1 of section 57-02-01, including a proceeding under chapter 15-03, 15-08, 32-19, 32-19.1, or 35-22, the executing creditor shall notify the debtor that the debtor may redeem the property described in section 47-18-01 separately from the remaining property. The notice required in sections 32-19-20 and 35-22-03 must contain a statement substantially similar to the following:

WARNING: This creditor is seeking foreclosure on agricultural property that may contain your homestead. Under North Dakota law, you have the right to redeem the lot or parcel that contains your homestead separately from the remaining property that is being foreclosed upon, by paying the purchase price, plus interest and costs, within the redemption period, which is generally one year from the date of the sale. The purchase price is the price bid at the foreclosure sale for that lot or parcel. You should consult with an attorney so you do not lose these valuable rights. You must provide the sheriff and the register of deeds with an accurate legal description of the homestead you wish to redeem either at the sale or at least ten business days before the date of the scheduled sheriff's sale.

If the creditor is foreclosing by action, an additional copy of the notice must be served with a summons and complaint. If the creditor is foreclosing by advertisement, an additional copy of the notice must be served no later than forty-five days before the date of the scheduled sale. The notice must be served in the same manner as service of a summons and complaint.

SECTION 4. Designation of homesteads to be separately redeemed. The debtor may designate a reasonably compact contiguous area including the debtor's dwelling but not to exceed one hundred sixty acres [64.75 hectares] to be sold separately at the foreclosure sale by serving a copy of the legal description of the property claimed under this section on the sheriff, the register of deeds, and the parties to the foreclosure proceeding at least fifteen business days before the date of the scheduled sheriff's sale.

SECTION 5. Objection to designation of parcel. Any party to foreclosure proceedings may contest the designation of property to be separately redeemed by serving notice upon the parties and by filing with the court no later than five business days before the sale an application for a hearing concerning the area proposed to be separately redeemed. The court shall consider the adequacy of the legal description, the highest sale price produced for the designated and remaining parcels, and the reasonable use of the designated parcel by the debtor.

SECTION 6. Sale of homestead. Any sheriff who receives a designation of the legal description of property under section 4 of this Act shall offer and sell that parcel separately from the remaining property, unless otherwise ordered by the court under section 5 of this Act.

SECTION 7. Redemption of homestead designated by the debtor after foreclosure. If a debtor has had agricultural property foreclosed upon but the period of redemption has not expired and the debtor has not received the notice required by section 3 of this Act, the debtor may agree in writing with the purchaser of the agricultural property to redeem separately property described under section 4 of this Act which the debtor has designated. The agreement must be recorded and must include a legal description of the property redeemed and the amount to be paid to redeem the property.

SECTION 8. Rights of redemptioners or purchasers. No redemptioner or purchaser may subsequently redeem or purchase the property designated by the debtor under section 4 of this Act if the debtor exercises the right to redeem or purchase it.

SECTION 9. Right of certain debtors to purchase homesteads acquired by lenders. Any lender required under section 108 of the Agricultural Credit Act of 1987 [Pub. L. 100-233; 101 Stat. 1582; 12 U.S.C. 2219a] to offer a debtor the right to purchase property acquired by the lender shall offer the debtor the right to purchase the property in at least two separate parcels, one of which must be a compact contiguous tract of up to one hundred sixty acres [64.75 hectares] which includes the debtor's dwelling and does not unreasonably diminish the access, use, or value of the remaining property. Any payment made to the lender by the debtor to purchase a parcel must be considered in any determination of whether the parcel unreasonably diminishes the access, use, or value of the remaining property. The offer must be made prior to any lease or sale of the tract including the dwelling to a third party and, in addition, at the time as required or permitted by the Agricultural Credit Act of 1987, but duplicative offers are not required. Failure of a lender to offer a debtor the right to purchase the property under the Agricultural Credit Act of 1987 does not give the debtor a claim for relief under this section.

SECTION 10. REPEAL. Chapter 194 of the 1987 Session Laws of North Dakota is hereby repealed.

SECTION 11. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 395

HOUSE BILL NO. 1050
(Legislative Council)
(Interim Judicial Process Committee)

MORTGAGE FORECLOSURE PROPERTY ABANDONMENT

AN ACT to amend and reenact sections 28-24-11, 32-19-06, and 32-19-19 of the North Dakota Century Code, relating to abandonment of real property subject to mortgage foreclosure actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-24-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-24-11. Debtor entitled to rents during redemption period. The debtor under an execution or foreclosure sale of ~~his~~ the debtor's property ~~shall be~~ is entitled to the possession, rents, use, and benefit of the property sold from the date of ~~such~~ the sale until the expiration of the period of redemption except as provided by section 32-19-19.

SECTION 2. AMENDMENT. Section 32-19-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19-06. What judgment ~~shall~~ must contain - Deficiency judgments and other suits prohibited in excess of amount by which debt exceeds fair value of mortgaged premises - Determination of fair value of mortgaged real property. In any action for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, the court ~~shall have the power to may~~ render judgment for the amount found to be due at the time of the rendition of ~~said~~ the judgment, and the costs of the action, and ~~to may~~ order and decree a sale of the premises described in such the mortgage or contract described, or ~~such~~ that part thereof as may be sufficient to pay the amount adjudged to be due and the costs of the action. The court ~~shall have power to may~~ order and compel delivery of the possession of the premises to the purchaser at ~~such~~ the sale, but in no case ~~shall may~~ the possession of the premises ~~so~~ sold be delivered until after the expiration of ~~one year from such sale,~~ and the one-year redemption period unless otherwise allowed by the court pursuant to section 32-19-19. The court shall direct, and the judgment ~~shall must~~ provide, that during ~~such one-year the~~ redemption period the debtor or owner of the premises ~~shall be~~ is entitled to the possession, rents, use, and benefit of the real property sold except as provided by section 32-19-19. The court under no circumstances shall have power to may not render a deficiency judgment for any sum whatever against the mortgagor or purchaser, or the successor in interest of either, except as hereinafter provided. Where a note or other obligation and a mortgage upon real property have been given to secure a debt contracted subsequent to after July 1, 1951, and the sale of the mortgaged premises has failed to satisfy in full the sum adjudged to be due and the costs of the action, the plaintiff may, in a separate action, ask for a deficiency judgment, if ~~he~~ the plaintiff has so

indicated in his the complaint, against the party or parties personally liable for that part of the debt and costs of the action remaining unsatisfied after the sale of the mortgaged premises. Such The separate action for a deficiency judgment must be brought within ninety days after the sale of the mortgaged premises. The court, in such the separate action, may render a deficiency judgment against the party or parties personally liable, but such the deficiency judgment shall may not be in excess of the amount by which the sum adjudged to be due and the costs of the action exceed the fair value of the mortgaged premises. In case the mortgaged premises sell for less than the amount due and to become due on the mortgaged debt and costs of sale, there shall be is no presumption that such the premises sold for their fair value. In all actions brought for a deficiency judgment and before any judgment can be rendered therein, the determination of the fair value of the mortgaged premises shall must first be submitted to a jury at a regular term or to a jury impaneled for that purpose, and no deficiency judgment can may be rendered against the party or parties personally liable unless the fair value of the mortgaged premises is determined by such the jury to be less than the sum adjudged to be due and the costs of the action. Fifteen days' notice of the time and place when or where such the fair value of the mortgaged premises shall is to be so determined shall must, in all cases, be given, as the court may direct, to the party or parties against whom personal judgment is sought. At such that time and place such the party or parties may offer evidence to show the fair value of the mortgaged premises even though they may not have otherwise appeared in the action for a deficiency judgment. Any deficiency judgment so obtained shall must be enforced by execution as provided by law, except that no execution shall may be enforced after three years from the date of the rendition of such the deficiency judgment. The mortgagee or vendor or the successor in interest of either shall is not be permitted or authorized either before or after the rendition of a judgment for the foreclosure of a real estate mortgage or the cancellation or the foreclosure of a land contract, if such the mortgage or contract was made after July 1, 1951, to bring any action in any court in this state for the recovery of any part of the debt secured by the mortgage or contract so foreclosed or canceled in excess of the amount by which such the debt and the costs of the action exceed the fair value of the mortgaged premises. Such The fair value shall must be determined by a jury in the same manner as the fair value is determined in cases where a deficiency judgment is sought in an action to foreclose the mortgage and such judgment shall must be enforced by execution as provided by law except that no such the execution shall may not be enforced after three years after the date of the rendition of such the judgment.

SECTION 3. AMENDMENT. Section 32-19-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-19-19. Injury to property restrained - Abandoned real property. The court, by injunction, on good cause shown, may restrain the party in possession from doing any act to the injury of real property during the existence of the lien or foreclosure of a mortgage thereon and until the expiration of the time allowed for redemption. If before the sheriff's sale the mortgagee or after the sheriff's sale the holder of the sheriff's certificate of sale reasonably believes that the property is abandoned, the mortgagee or holder of the sheriff's certificate may petition the court to determine abandonment. A notice of hearing must be sent by mail to the last known address of the mortgagor or the party entitled to possession of the real property at least ten days prior to the date of the hearing to determine abandonment. Service by mail is complete upon mailing. If the court

determines that the real property is abandoned, the court may grant the mortgagee or holder of the sheriff's certificate immediate possession and use of the property and all benefit and rents from the property until expiration of the redemption period. The court may proceed at the hearing to consider remedies to prevent waste. The provisions of this section concerning abandoned real property do not apply to agricultural property as defined by section 57-02-01.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 396

HOUSE BILL NO. 1032
(Legislative Council)
(Interim Administrative Rules Committee)

ADMINISTRATIVE RULEMAKING

AN ACT to create and enact four new subdivisions to subsection 6 of section 28-32-01 and a new section to chapter 28-32 of the North Dakota Century Code, relating to what is excluded from a rule and not subject to the requirements of the Administrative Agencies Practice Act and to regulatory analysis of proposed rules; and to amend and reenact sections 28-32-02, 28-32-03, and 28-32-22 of the North Dakota Century Code, relating to administrative agency rulemaking procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Four new subdivisions to subsection 6 of section 28-32-01 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Interpretive statements, general statements of policy, or statements of agency organization, procedure, or practice.

Guidelines, manuals, brochures, pamphlets, and similar statements of policy intended to advise or guide the agency or the public concerning activities of the agency which are otherwise prescribed by rule or statute.

Statements of policy intended to implement federal statutes, rules, or requirements with which compliance by the agency is necessary to secure appropriated revenues, or to avoid the loss of otherwise available federal revenues.

A contract.

SECTION 2. AMENDMENT. Section 28-32-02 of the 1987 Supplement to the North Dakota Century code is hereby amended and reenacted to read as follows:

28-32-02. Rulemaking power of agency - Adoption deadlines - ~~Notice~~
Hearing notice - Emergencies - Attorney general's opinion.

1. Every administrative agency is authorized to adopt, and from time to time to amend or repeal, reasonable rules in conformity with the provisions of any statute administered or enforced by the agency, ~~and to prescribe methods and procedure required in connection therewith.~~

2. Any rule change, including a creation, amendment, or repeal, made to implement a statutory change must be adopted and filed with the office of the legislative council within nine months of the effective date of the statutory change. If an agency needs additional time for the rule change, a request for additional time must be made to the legislative council. The legislative council may extend the time within which the agency must adopt the rule change if the request by the agency is supported by evidence that the agency needs more time through no deliberate fault of its own. ~~Prior to the adoption, amendment, or repeal of any rule, the~~
3. ~~The~~ agency shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning the proposed rule, including data respecting the impact of the proposed rule. In case of substantive rules, ~~opportunity for the agency shall conduct an oral hearing must be granted if requested.~~ The agency shall consider fully all written and oral submissions respecting ~~the~~ a proposed rule prior to the adoption, amendment, or repeal of any rule not of an emergency nature. The agency shall make a written record of its consideration of all written and oral submissions contained in the rulemaking record respecting a proposed rule.
4. The agency's notice of the proposed adoption, amendment, or repeal of a rule must include a short explanation of the purpose of the proposed rule, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written data, views, or arguments concerning the proposed rule may be sent and, in the case of a substantive rule, the time and place set for each oral hearing. The notice must be filed with the office of the legislative council and published at least twice in each daily newspaper of general circulation published in this state. The notice must be mailed to each person who has made a timely request to the agency for a mailed copy of the notice. The agency may mail or otherwise provide a copy of the notice to any person who is likely to be an interested person. The agency may charge for the actual cost of providing copies of the proposed rule. At least thirty days must elapse between the later of the date of the first publication of the notice or the date of filing with the office of the legislative council and the end of the period in which written or oral data, views, or arguments concerning the proposed rules will be received.
5. The legislative council shall establish a procedure whereby any person may request and receive mailed copies of all filings made by agencies pursuant to subsection 4. The legislative council may charge for the actual cost of providing copies of the filings.
6. If the agency finds that emergency rulemaking is necessary because of imminent peril to the public health, safety, or welfare, or because a delay in rulemaking is likely to cause a loss of revenues appropriated to support a duty imposed by law upon the agency, the agency may declare the proposed rule to be an interim final rule effective on a date no earlier than the date of filing with the legislative council of the notice required by subsection 4. A final rule adopted after consideration of all written and oral submissions respecting the interim final rule, which is

substantially similar to the interim final rule, is effective as of the declared effective date of the interim final rule. The agency's finding, and a brief statement of the reasons therefor, must be filed with the office of the legislative council, along with any final rule adopted. The agency shall take appropriate measures to make interim final rules known to every person who may be affected by them. An interim final rule is ineffective one hundred eighty days after its declared effective date unless first adopted as a final rule.

7. Every rule proposed by any administrative agency must be submitted to the attorney general for an opinion as to its legality before final adoption, and the attorney general shall promptly furnish each such opinion. The attorney general may not approve any rule as to legality when the rule merely repeats or paraphrases the text of the statute purported to be implemented by the rule. The attorney general may not approve any rule as to legality where the rule exceeds the statutory authority of the agency or is written in a manner that is not concise or easily understandable. The attorney general may suggest any revision or rewording of a rule to meet objections as to legality.

SECTION 3. A new section to chapter 28-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

Regulatory analysis.

1. An agency shall issue a regulatory analysis of a proposed rule if, within twenty days after the published notice of proposed rule adoption, a written request for the analysis is filed by the governor or an agency. The agency proposing the rule shall issue a regulatory analysis if the proposed rule is expected to have an impact on the regulated community in excess of fifty thousand dollars.
2. The regulatory analysis must contain:
 - a. A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
 - b. A description of the probable impact, including economic impact, of the proposed rule;
 - c. The probable costs to the agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues; and
 - d. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why the methods were rejected in favor of the proposed rule.
3. Each regulatory analysis must include quantification of the data to the extent practicable.

4. The agency shall make the regulatory analysis available to any interested person who requests an opportunity to review the regulatory analysis. The agency may charge for the actual cost of providing copies of the regulatory analysis.
5. If required under subsection 1, the preparation and issuance of a regulatory analysis is a mandatory duty of the agency proposing a rule. A writ of mandamus may issue under the terms and conditions provided for in chapter 32-34 upon the application of a party beneficially interested and aggrieved by an agency's failure to prepare and issue a required regulatory analysis. Errors in a regulatory analysis, including erroneous determinations concerning the impact of the proposed rule on the regulated community, are not a ground upon which the invalidity of a rule may be asserted or declared.

SECTION 4. AMENDMENT. Section 28-32-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-03. Filing of rules - Force and effect of rules - Form and style of rules - Rules invalid unless in compliance with chapter.

1. A copy of each rule adopted by an administrative agency, and the attorney general's opinion thereon, shall must be filed by the adopting agency with the office of the legislative council for publication in the North Dakota Administrative Code. Except as provided in section 28-32-03.1, rules not published in the administrative code shall be invalid.
2. Rules Nonemergency rules approved by the attorney general as to legality, adopted by an administrative agency, and filed with the office of the legislative council ~~shall~~ become effective the first day of the month after the month of publication as provided for in section 28-32-03.1, except that:
 - a. If if a later date is required by statute or specified in the rule, the later date ~~shall be~~ is the effective date.
 - b. Subject to applicable constitutional or statutory provisions, an emergency rule ~~shall become effective immediately upon approval by the attorney general, or at a stated date prior to the first day of the month after the month of publication in the code or code supplement; if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefore shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.~~
3. Upon becoming effective, rules shall have the force and effect of law until amended or repealed by the agency or, declared invalid by a final court decision, or determined repealed by the office of the legislative council because the authority for adoption of the rules is repealed or transferred to another agency.

4. The office of the legislative council may prescribe a format, style, and arrangement for rules which are to be published in the code, and may refuse to accept the filing of any rule that is not in substantial compliance therewith. In arranging rules for publication, the office of the legislative council may make such corrections in spelling, grammatical construction, format, and punctuation of the rules as deemed proper. The office of the legislative council shall keep and maintain a permanent code of all rules filed, including superseded and repealed rules, which ~~shall~~ must be open to public inspection during office hours.
5. A rule is invalid unless adopted in substantial compliance with section 28-32-02. However, inadvertent failure to supply any person with a notice required by section 28-32-02 does not invalidate a rule. An action to contest the validity of a rule on the grounds of noncompliance with section 28-32-02 must be commenced within two years of the effective date of the rule.

SECTION 5. AMENDMENT. Section 28-32-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-22. Effective date. The procedure specified in this chapter shall apply to all claims and proceedings filed in or commenced by an administrative agency subsequent to July 1, 1941 the effective date of this Act.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 397

HOUSE BILL NO. 1564
(Murphy)

PERJURY WARNING IN ADMINISTRATIVE HEARINGS

AN ACT to amend and reenact section 28-32-11 of the North Dakota Century Code, relating to duty of administrative hearing officers to warn parties of perjury.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-32-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-11. Administration of oaths - Parties to be advised of perjury provisions. The officer, special examiner, chairman, or acting chairman of an administrative agency before which a proceeding or hearing is held ~~shall have~~ has the power to examine witnesses and records and to administer oaths to witnesses. At the time the officer conducting the proceeding or hearing administers the oath to a witness, the officer shall advise the witness of the provisions of subsection 1 of section 12.1-11-01 and of the maximum penalty for perjury.

Approved April 15, 1989
Filed April 17, 1989

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 398

HOUSE BILL NO. 1055
(Legislative Council)
(Interim Judiciary Committee)

JURY SIZE IN FELONY CASES

AN ACT to amend and reenact section 29-17-12 of the North Dakota Century Code, relating to the number of jurors in felony cases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-17-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

29-17-12. Number of jurors - How sworn. In all felony ~~and cases when a jury is impaneled, a jury must consist of twelve qualified jurors.~~ In class A misdemeanor cases when a jury is impaneled, a jury ~~shall~~ must consist of six qualified jurors unless the defendant makes a timely written demand for a jury of twelve. In all other misdemeanor cases when a jury is impaneled, a jury ~~shall~~ must consist of six qualified jurors. Jurors ~~shall~~ must be sworn or affirmed well and truly to try and true deliverance make between the state of North Dakota and the defendant whom they ~~shall~~ have in charge, and ~~to give a true verdict to give according to the evidence, and such.~~ The verdict must be unanimous.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 399

SENATE BILL NO. 2465
(Lashkowitz, Olson, Redlin)

DRUG OFFENSE WIRETAPS AND PENALTIES

AN ACT to authorize wiretapping and eavesdropping in felony drug offense investigations; to create and enact a new section to chapter 19-03.1 of the North Dakota Century Code, relating to penalties for drug offenses involving certain aggravating factors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 5 of this Act, unless the context otherwise requires:

1. "Aggrieved person" means a person who was a party to any intercepted wire, electronic, or oral communication or a person against whom the interception was directed.
2. "Common carrier" is defined in section 8-07-01.
3. "Contents", when used with respect to any wire, electronic, or oral communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purport, or meaning of that communication.
4. "Electronic communication" means transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system, but does not include:
 - a. The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;
 - b. A wire or oral communication;
 - c. A communication made through a tone-only paging device; or
 - d. A communication from a tracking device, defined as an electronic or mechanical device that permits the tracing of the movement of a person or object.
5. "Electronic, mechanical, or other device" means any device or apparatus that can be used to intercept a wire, electronic, or oral communication, other than:
 - a. Any telephone or telegraph instrument, equipment, or facility, or any component thereof, either:

- (1) Furnished to the subscriber or user in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by a subscriber or user for connection to the facilities of service and used in the ordinary course of its business; or
 - (2) Being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of the officer's duties.
- b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal;
 - c. A device or apparatus specifically designed to only record conversations to which the operator of the device is a party;
 - d. A device or apparatus used in the normal course of broadcasting by radio or television; or
 - e. A device or apparatus that is otherwise commonly used for a purpose other than overhearing or recording conversations.

In determining whether a device that is alleged to be an electronic, mechanical, or other device is, in fact, such a device, there must be taken into account, among other things, the size, appearance, directivity, range, sensitivity, frequency, power, or intensity, and the representation of the maker or manufacturer as to its performance and use.

6. "Intercept" means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.
7. "Judge of competent jurisdiction" means justice of the supreme court of this state or judge of any district court of this state.
8. "Law enforcement officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
9. "Oral communication" means a communication uttered by a person believing that the communication is not subject to interception, under circumstances justifying that belief, but does not include any electronic communication.
10. "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, including any electronic storage of the communication, but does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

SECTION 2. Ex parte order for wiretapping and eavesdropping.

1. An ex parte order for wiretapping or eavesdropping, or both, may be issued by any judge of competent jurisdiction. The order may be issued upon application of the attorney general, or an assistant attorney general, or a state's attorney, or an assistant state's attorney, showing by affidavit that there is probable cause to believe that evidence will be obtained of the commission or attempted commission of a felony violation of chapter 19-03.1, or a criminal conspiracy to commit a felony violation of chapter 19-03.1.
2. Unless otherwise provided by law, an ex parte order for wiretapping or eavesdropping may be issued only for a crime specified in subsection 1 for which a felony penalty is authorized upon conviction.
3. Each application for wiretapping or eavesdropping, or both, must be made in writing upon oath or affirmation to a judge of competent jurisdiction and must state the applicant's authority to make the application. Each application must include:
 - a. The identity of the law enforcement officer making the application, and the officer authorizing the application.
 - b. A complete statement of the facts and circumstances relied upon by the applicant, to justify the belief that an order should be issued, including: details as to the particular offense that has been, is being, or is about to be committed; a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted; a particular description of the type of communication sought to be intercepted; and the identity of the person, if known, committing the offense and whose communications are to be intercepted.
 - c. A complete statement as to whether other investigative procedures have been tried and failed, or why they reasonably appear to be unlikely to succeed if tried, or to be too dangerous.
 - d. A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, there must be a particular description of the facts establishing probable cause to believe that additional communications of the same type will occur thereafter.
 - e. A complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire, electronic, or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application.

- f. Where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain those results.
4. The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.
5. Upon an application, the judge may enter an ex parte order, as requested or as modified, authorizing or approving wiretapping or eavesdropping within the territorial jurisdiction of the court in which the judge is sitting, if the judge determines on the basis of the facts submitted by the applicant that:
 - a. There is probable cause for belief that a person is committing, has committed, or is about to commit a felony violation of chapter 19-03.1 or a criminal conspiracy to commit a felony violation of chapter 19-03.1;
 - b. There is probable cause for belief that particular communications concerning that offense will be obtained through the interception;
 - c. Normal investigative procedures have been tried and have failed, or reasonably appear to be unlikely to succeed if tried, or to be too dangerous; and
 - d. There is probable cause for belief that the facilities from which or the place where the wire, electronic, or oral communications are to be intercepted are being used, or about to be used, in connection with the commission of an offense, or are leased to, listed in the name of, or commonly used by the person alleged to be involved in the commission of the offense.
6. Each order authorizing or approving wiretapping or eavesdropping must specify:
 - a. The identity of the person, if known, whose communications are to be intercepted.
 - b. The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted.
 - c. A particular description of the type of communications sought to be intercepted, and a statement of the particular offense to which it relates.
 - d. The identity of the agency authorized to intercept the communications, and of the person authorizing the application.
 - e. The period of time during which an interception is authorized, including a statement as to whether the interception automatically terminates when the subscribed communication is first obtained.
7. No order entered under sections 1 through 5 of this Act may authorize or approve the interception of any wire, electronic, or

oral communication for any period longer than is necessary to achieve the objective of the authorization. In no event may the period exceed thirty days. The thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered. An extension of an order may be granted, but only upon application for an extension made in accordance with subsection 3, and to the court making the findings required by subsection 5. The period of the extension may be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted, and in no event for longer than thirty days. Every order and extension of an order must contain provisions that the authorization to intercept must be executed as soon as practicable, must be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this section, and must terminate upon attainment of the authorized objective, or in any event in thirty days. No more than one extension may be granted for any order entered under this section.

8. If an order authorizing interception is entered pursuant to this section, the order may require reports to be made to the judge who issued the order, showing what progress has been made toward achievement of the authorized objective and the need for continued interception. A report must be made at any time the judge requires.
9.
 - a. The contents of any wire, electronic, or oral communication intercepted by any means authorized by this section must, if possible, be recorded on tape, wire, or other comparable device. The recording of the contents of any wire, electronic, or oral communication under this subsection must be done in such a way as will protect the recording from editing or other alterations. Immediately upon expiration of the period of the order, or extension of the order, the recording must be made available to the judge issuing the order and sealed under the judge's directions. The judge shall direct where the recording must be maintained. A recording may not be destroyed except upon an order of the judge, and in any event must be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to this section. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, is a prerequisite for the use or disclosure of the contents of any wire, electronic, or oral communication or evidence derived under this section.
 - b. Applications made and orders granted under this section must be sealed by the judge. The judge shall direct where applications and orders must be maintained. The applications and orders may be disclosed only upon a showing of good cause before a judge of competent jurisdiction, and may not be destroyed except on order of the judge to whom presented. In any event applications and orders must be kept for ten years. Information obtained pursuant to a court order authorizing interception of wire, electronic, or oral communications may not be used, published, or divulged except in accordance with sections 1 through 5 of this Act.

- c. The court may punish violation of this subsection as contempt of court.
10. Within a reasonable time, but not later than ninety days after the termination of the period of an order or extension thereof, the judge to whom the application was presented shall cause to be served, on the persons named in the order or the application, and any other party to intercepted communications as the judge may determine is in the interest of justice, notice of the following:
- a. The fact of the entry of the order.
- b. The date of the entry and the period of authorized interception.
- c. The fact that during the period wire, electronic, or oral communications were intercepted.

The judge, upon the filing of a motion, may make available to any person or counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge of competent jurisdiction, the serving of the matter required by this subsection may be postponed.

11. The contents of any intercepted wire, electronic, or oral communication or evidence derived therefrom may not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in a court, unless each party, not less than ten days before the trial, hearing, or proceeding, has been furnished with a copy of the court order, and accompanying application, under which the interception was authorized or approved. This ten-day period may be waived by the court if the court finds that it was not possible to furnish the party with the information ten days before the trial, hearing, or proceeding, and that the party will not be prejudiced by the delay in receiving this information.
12. An aggrieved person in any trial, hearing, or proceeding in or before any court, officer, agency, or other authority of this state, or a political subdivision of this state, may move to suppress the contents of any intercepted wire, electronic, or oral communication, or evidence derived therefrom, on the grounds that the communication was unlawfully intercepted, the order of authorization or approval under which it was intercepted is insufficient on its face, or the interception was not made in conformity with the order of authorization or approval. This motion must be made before the trial, hearing, or proceeding unless there was no opportunity to make the motion, or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, electronic, or oral communication, or evidence derived from the communication may not be received as evidence. The court, upon the filing of the motion by the aggrieved person, may make available to the aggrieved person or the person's counsel for inspection any portion of the intercepted communication or evidence derived from the communication as the court determines to be in the interests of justice.

13. In addition to any other right to appeal, the state has the right to appeal from an order granting a motion to suppress made under subsection 12, or the denial of an application for an order of approval, if the person making or authorizing the application certifies to the judge granting the motion or denying an application that the appeal is not taken for purposes of delay. The appeal must be taken within thirty days after the date the order was entered and must be diligently prosecuted.
14. A law enforcement officer who, by any means authorized by this section, has obtained knowledge of the contents of a wire, electronic, or oral communication, or evidence derived from the communication, may disclose the contents to another law enforcement officer to the extent that this disclosure is appropriate in the proper performance of the official duties of the officer making or receiving the disclosure.
15. A law enforcement officer who, by means authorized by this section, has obtained knowledge of the contents of any wire, electronic, or oral communication or evidence derived therefrom may use those contents to the extent the use is appropriate in the official performance of official duties.
16. A person who has received, by means authorized by this section, information concerning a wire, electronic, or oral communication, or evidence derived from the communication, intercepted in accordance with this section, may disclose the contents of that communication or derivative evidence while giving testimony in any proceeding held under the authority of the United States or this state.
17. No otherwise privileged wire, electronic, or oral communication intercepted in accordance with, or in violation of, this section loses its privileged character.
18. When a law enforcement officer, while engaged in intercepting wire, electronic, or oral communications in the manner authorized in this section, intercepts wire, electronic, or oral communications relating to an offense other than one specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections 14 and 15 only if an offense other than one specified in the order is an offense that constitutes a felony under the laws of this state. The contents, and evidence derived from the contents, as authorized by this section, may be used under subsection 16 only when authorized or approved by a judge of competent jurisdiction, when the judge finds on subsequent application that the contents were otherwise intercepted in accordance with this section. This application must be made as soon as practicable.
19. The requirements of subdivision b of subsection 3 and subdivision d of subsection 5 relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

- a. In the case of an application with respect to the interception of an oral communication, the application contains a full and complete statement as to why such specification is not practical and identifies the person committing the offense and whose communications are to be intercepted and the judge finds that such specification is not practical; or
 - b. In the case of an application with respect to a wire or electronic communication, the application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose, on the part of that person, to thwart interception by changing facilities and the judge finds that such purpose has been adequately shown.
20. An interception of a communication under an order with respect to which the requirements of subdivision b of subsection 3 and subdivision d of subsection 5 do not apply by reason of subsection 19 may not begin until the facilities from which, or the place where, the communication is to be intercepted is ascertained by the person implementing the interception order. A provider of wire or electronic communication service which has received an order as provided for in subdivision b of subsection 19 may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable fashion. The court, upon notice to the government, shall rule on such a motion expeditiously.

SECTION 3. Order may direct others to furnish assistance. An order authorizing the interception of a wire, electronic, or oral communication must, upon request of the applicant, direct that a communication common carrier shall furnish the applicant forthwith all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the carrier is according the person whose communications are to be intercepted. A communication common carrier furnishing these facilities or technical assistance must be compensated by the applicant for reasonable expenses incurred in providing the facilities or assistance.

SECTION 4. Reports to attorney general. A state's attorney shall report annually to the attorney general information as to the number of applications made for orders permitting the interception of wire, electronic, or oral communications; the offense specified in the order or application; the nature of the facilities from which or the place where communications were to be intercepted; the number of persons whose communications were intercepted, the number of arrests resulting from interceptions made under such order or extension, and the offenses for which arrests were made; the number of motions to suppress made with respect to such interceptions and the number granted or denied; the number of convictions resulting from the interceptions and the offenses for which the convictions were obtained; and a general assessment of the importance of the interceptions. The state's attorney shall submit the report to the attorney general by January first of each year. The report must include all orders and applications made, but not in effect, during the preceding year.

SECTION 5. Inapplicability. Sections 1 through 5 of this Act do not apply to the interception, disclosure, or use of a wire, electronic, or oral

communication if the person intercepting, disclosing, or using the wire, electronic, or oral communication:

1. Was a person acting under color of law to intercept a wire, electronic, or oral communication and was a party to the communication or one of the parties to the communication had given prior consent to such interception; or
2. Was a party to the communication or one of the parties to the communication had given prior consent to such interception and such communication was not intercepted for the purpose of committing a crime or other unlawful harm.

SECTION 6. A new section to chapter 19-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Increased penalties for aggravating factors in drug offenses.

1. A person who violates section 19-03.1-23 is subject to the penalties provided in subsection 2 if:
 - a. The offense involved the manufacture or distribution of a controlled substance in or on, or within one thousand feet [300.48 meters] of, the real property comprising a public or private elementary or secondary school, public vocational school, or a public or private college or university;
 - b. The defendant was at least eighteen years of age at the time of the offense and the offense involved the delivery of a controlled substance to a minor; or
 - c. The offense involved:
 - (1) One hundred grams or more of a mixture or substance containing a detectable amount of heroin;
 - (2) Five hundred grams or more of a mixture or substance containing a detectable amount of:
 - (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;
 - (3) Five grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;

- (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
 - (5) One gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide; or
 - (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide.
2. The offense is:
- a. A class AA felony if the violation of section 19-03.1-23 is designated as a class A felony.
 - b. A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.
 - c. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.
 - d. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

Approved April 13, 1989

Filed April 13, 1989

CHAPTER 400

SENATE BILL NO. 2514
(Lashkowitz, Olson)

PEN REGISTERS AND TRAP AND TRACE DEVICES

AN ACT relating to pen registers and trap and trace devices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Electronic communication" means transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system. The term does not include the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a wire or oral communication, a communication made through a tone-only paging device, or a communication from a tracking device.
2. "Electronic communication service" means any service that provides to users of the service the ability to send or receive wire or electronic communications.
3. "Pen register" means a device that records or decodes electronic or other impulses that identify the number dialed or otherwise transmitted on the telephone line to which the device is attached, but the term does not include a device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by the provider or a device used by a provider or customer of a wire communication service for cost accounting or other like purposes in the ordinary course of its business.
4. "Tracking device" means an electronic or mechanical device that permits the tracing of the movement of a person or object.
5. "Trap and trace device" means a device which captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.
6. "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception, including any electronic storage of the communication, but does not include the radio portion of a cordless telephone communication that is

transmitted between the cordless telephone handset and the base unit.

SECTION 2. Prohibition on pen register and trap and trace device use - Exception.

1. A person may not install or use a pen register or trap and trace device without first obtaining a court order under this Act. The prohibition in this section does not apply with respect to the use of a pen register or a trap and trace device by a provider of electronic or wire communication service:
 - a. Relating to the operation, maintenance, and testing of a wire or electronic communication service or to the protection of the rights or property of such provider, or to the protection of users of that service from abuse of service or unlawful use of service;
 - b. To record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire communication, or a user of that service, from fraudulent, unlawful or abusive use of service; or
 - c. Where the consent of the user of that service has been obtained.

SECTION 3. Application for an order for a pen register or a trap and trace device.

1. The attorney general, an assistant attorney general, a state's attorney, or an assistant state's attorney may make application, in writing under oath or equivalent affirmation, for an order or an extension of an order under this Act authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter to a court of competent jurisdiction.
2. An investigative or law enforcement officer may make application, in writing under oath or equivalent affirmation, for an order or an extension of an order under this Act authorizing or approving the installation and use of a pen register or a trap and trace device under this chapter to a court of competent jurisdiction of this state.
3. An application under subsection 1 or 2 must include:
 - a. The identity of the attorney general, assistant attorney general, state's attorney, or assistant state's attorney or the law enforcement or investigative officer making the application and the identity of the law enforcement agency conducting the investigation; and
 - b. A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

SECTION 4. Issuance of an order for a pen register or a trap and trace device - Notice.

1. Upon an application made under this Act, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the attorney general, assistant attorney general, state's attorney, or assistant state's attorney or the law enforcement or investigative officer has certified to the court that the information likely to be obtained by such installation and use is relevant to ongoing criminal investigation.
2. An order issued under this section:
 - a. Must specify:
 - (1) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;
 - (2) The identity, if known, of the person who is the subject of the criminal investigation;
 - (3) The number and, if known, physical location of the telephone line to which the pen register or trap and trace device is to be attached and, in the case of a trap and trace device, the geographic limits of the trap and trace order; and
 - (4) A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.
 - b. Must direct, upon the request of the applicant, the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under this chapter.
3. An order issued under this section authorizes the installation and use of a pen register or a trap and trace device for a period not to exceed sixty days. Extensions of the order may be granted, but only upon an application for an order under this Act and upon the judicial finding required by subsection 1. The period of extension may not exceed sixty days.
4. An order authorizing or approving the installation and use of a pen register or a trap and trace device must direct that:
 - a. The order be sealed until otherwise ordered by the court; and
 - b. The person owning or leasing the line to which the pen register or a trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber, or to any other person, unless otherwise ordered by the court.

5. Within a reasonable time, but not later than one year after the termination of the period of an order or extension of an order, the judge to whom the application was presented shall cause to be served on the persons named in the order or application, and on any other party the notification of whom the judge determines is in the interest of justice, notice of:
 - a. The fact of the entry of the order.
 - b. The date of the entry and the period of authorized installation and use of the pen register or trap and trace device.
 - c. The fact that during the period of the order or extension information was obtained through use of the pen register or trap and trace device.

SECTION 5. Assistance in installation and use of a pen register or a trap and trace device.

1. Upon the request of the attorney general, assistant attorney general, state's attorney, or assistant state's attorney or an officer of a law enforcement agency authorized to install and use a pen register under this Act, a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the investigative or law enforcement officer all information, facilities, and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order as provided in this Act.
2. Upon the request of the attorney general, assistant attorney general, state's attorney, or assistant state's attorney or an officer of a law enforcement agency authorized to receive the results of a trap and trace device under this Act, a provider of a wire or electronic communication service, landlord, custodian, or other person shall install the device on the appropriate line and shall furnish the investigative or law enforcement officer all additional information, facilities, and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person so ordered by the court accords the party with respect to whom the installation and use is to take place, if such installation and assistance is directed by a court order as provided in this Act. Unless otherwise ordered by the court, the results of the trap and trace device must be furnished to the officer of a law enforcement agency designated by the court at reasonable intervals during regular business hours for the duration of the order.
3. A provider of a wire or electronic communication service, landlord, custodian, or other person who furnishes facilities or technical assistance under this section must be reasonably compensated for reasonable expenses incurred in providing the facilities and assistance.

4. No cause of action lies in any court against any provider of a wire or electronic communication service, its officers, employees, agents, or other specified persons for providing information, facilities, or assistance in accordance with the terms of a court order under this Act.
5. A good faith reliance on a court order, a legislative authorization, or a statutory authorization is a complete defense against any civil or criminal action brought under this Act or any other law.

Approved April 13, 1989

Filed April 13, 1989

UNIFORM PROBATE CODE

CHAPTER 401

HOUSE BILL NO. 1101
(Committee on Judiciary)

(At the request of the Commission on Uniform State Laws)

UNIFORM PROBATE CODE REVISIONS

AN ACT to amend and reenact sections 30.1-01-04, 30.1-09-07, subsection 2 of section 30.1-09-08, sections 30.1-12-08, 30.1-14-04, 30.1-18-05, 30.1-19-06, subdivision d of subsection 1 of section 30.1-20-06, and sections 30.1-20-15, 30.1-29-19, 30.1-30-01, and 30.1-30-02 of the North Dakota Century Code, relating to probate, conservators, and durable powers of attorney.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-01-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-01-04. (1-107) Evidence as to death or status. In proceedings under this title, the rules of evidence in courts of general jurisdiction, including any relating to simultaneous deaths, are applicable unless specifically displaced by this title. In addition, the following rules relating to determination of death and status are applicable:

1. A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death, and the identity of the decedent.
2. A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.
3. In the absence of prima facie evidence of death under subsection 1 or 2, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.
4. A person whose death is not otherwise established under this section, who is absent for a continuous period of seven years, during which time he the person has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. His The death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

SECTION 2. AMENDMENT. Section 30.1-09-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-09-07. (2-607) Change in securities - Accessions - Nonademption.

1. If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:
 - a. As much of the devised securities as is a part of the estate at the time of the testator's death.
 - b. Any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options.
 - c. Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization, or other similar action initiated by the entity.
 - d. Any additional securities of the entity owned by the testator as a result of a plan of reinvestment **if it is a regulated investment company.**
2. Distributions ~~prior to~~ before death with respect to a specifically devised security not provided for in subsection 1 are not part of the specific devise.

SECTION 3. AMENDMENT. Subsection 2 of section 30.1-09-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If specifically devised property is sold by a conservator or by an agent acting within the authority of a durable power of attorney for a principal who is under a disability, or if a condemnation award or insurance proceeds are paid to a conservator or to an agent acting within the authority of a durable power of attorney for a principal who is under a disability as a result of condemnation, fire, or casualty, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the condemnation award, or the insurance proceeds. This subsection does not apply if, after the sale, condemnation, fire, or casualty, it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by one year. The right of the specific devisee under this subsection is reduced by any right ~~he~~ the devisee has under subsection 1.

SECTION 4. AMENDMENT. Section 30.1-12-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-12-08. (3-108) Probate, testacy, and appointment proceedings - Ultimate time limit. No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except:

1. If a previous proceeding was dismissed because of doubt about the fact of the decedent's death, appropriate probate, appointment, or testacy proceedings may be maintained at any time thereafter upon a

finding that the decedent's death occurred prior to the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceedings.

2. Appropriate probate, appointment, or testacy proceedings may be maintained in relation to the estate of an absent, disappeared, or missing person for whose estate a conservator has been appointed, at any time within three years after the conservator becomes able to establish the death of the protected person.
3. A proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful, may be commenced within the later of twelve months from the informal probate or three years from the decedent's death.
4. If no proceeding concerning the succession or administration of the estate has occurred within three years after the decedent's death, a formal testacy proceeding may be commenced at any time three years or more after the decedent's death for the sole purpose of establishing a devise of property that the devisee or the devisee's successors and assigns possessed under the will or property that was not possessed or claimed by anyone by virtue of the decedent's title during the three-year period, and the order of the court is limited to that property.

These limitations do not apply to proceedings to construe probated wills or determine heirs of an intestate. In cases under subsection 1 or 2, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitations provisions of this title which relate to the date of death.

SECTION 5. AMENDMENT. Section 30.1-14-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-14-04. (3-304) Informal probate - Unavailable in certain cases. Applications for informal probate which relate to one or more of a known series of testamentary instruments, other than wills a will and one or more ~~wills~~ codicils to the will, the latest of which does not expressly revoke the earlier, ~~shall~~ must be declined.

SECTION 6. AMENDMENT. Section 30.1-18-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-18-05. (3-705) Duty of personal representative - Information to heirs and devisees. Not later than thirty days after ~~his~~ appointment, every personal representative, except any special administrator, shall give information of ~~his~~ the appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application for appointment of a personal representative. The information ~~shall~~ must be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require information to persons who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate. The information ~~shall~~ must include the name and address of the personal

representative, indicate that it is being sent to persons who have or may have some interest in the estate being administered, indicate whether bond has been filed, and describe the court where papers relating to the estate are on file. The information must state that the estate is being administered by the personal representative under this title without supervision by the court, but that recipients are entitled to information regarding the administration from the personal representative and may petition the court in any matter relating to the estate, including distribution of assets and expenses of administration. The personal representative's failure to give this information is a breach of his duty to the persons concerned but does not affect the validity of his the appointment, his the personal representative's powers, or other duties. A personal representative may inform other persons of his the appointment by delivery or ordinary first-class mail.

SECTION 7. AMENDMENT. Section 30.1-19-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-19-06. (3-806) Allowance of claims.

1. As to claims presented in the manner described in section 30.1-19-04 within the time limit prescribed in section 30.1-19-03, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, ~~he~~ the personal representative shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed, in whole or in part, by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.
2. After allowing a claim, the personal representative may before payment change the allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment or an order directing payment of the claim. The personal representative shall notify the claimant of the change to disallowance, and the disallowed claim is then subject to bar as provided under subsection 1. After disallowing a claim, the personal representative may change a disallowance to an allowance in whole or in part until it is barred under subsection 1; after it is barred, it may be allowed and paid only if the estate is solvent and all successors whose interests would be affected consent.
3. Upon the petition of the personal representative or of a claimant in a proceeding for the purpose, the court may allow, in whole or in part, any claim or claims presented to the personal representative or filed with the clerk of the court in due time and not barred by subsection 1. Notice in this proceeding ~~shall~~ must

be given to the claimant, the personal representative, and those other persons interested in the estate as the court may direct, by order entered at the time the proceeding is commenced.

- 3- 4. A judgment in a proceeding in another court against a personal representative to enforce a claim against a decedent's estate is an allowance of the claim.
- 4- 5. Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear interest at the legal rate for the period commencing sixty days after the time for original presentation of the claim has expired unless based on a contract making a provision for interest, in which case they allowed claims bear interest in accordance with that provision.

SECTION 8. AMENDMENT. Subdivision d of subsection 1 of section 30.1-20-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- d. The residuary estate ~~shall~~ must be distributed in kind if there is no objection to the proposed distribution and it is practicable to distribute undivided interests. In other cases, residuary property may be converted into cash for distribution any equitable manner.

SECTION 9. AMENDMENT. Section 30.1-20-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-20-15. (3-915) Distribution to person under disability.

1. A personal representative may discharge his the personal representative's obligation to distribute to any person under legal disability by distributing to his conservator, or any other person authorized by this title or otherwise to give a valid receipt and discharge for the distribution in a manner expressly provided in the will.
2. Unless contrary to an express provision in the will, the personal representative may discharge the personal representative's obligation to distribute to a minor or to a person under other disability by distributing to the distributor's attorney in fact. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.
3. If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to any of the following:
 - a. An attorney in fact who has authority under a power of attorney to receive property for that person.
 - b. The spouse, parent, or other close relative with whom the person under disability resides, if the distribution is of an

amount or value not exceeding ten thousand dollars per year, unless the court authorizes a larger amount or greater value.

Persons receiving money or property for a disabled person are obligated to apply the money or property to the support of that person, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed under this subsection.

SECTION 10. AMENDMENT. Section 30.1-29-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-29-19. (5-419) Accounts. Every conservator must account to the court for ~~his~~ administration of the trust not less than annually unless the court directs otherwise, upon ~~his~~ resignation or removal, and at other times as the court may direct. On termination of the protected person's minority or disability, a conservator may account to the court, ~~or he may account to the former protected person or his the protected person's~~ personal representative. Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to ~~his~~ liabilities concerning the matters considered in connection therewith. An order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or ~~his the protected person's~~ successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

SECTION 11. AMENDMENT. Section 30.1-30-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-30-01. (5-501) Definition. A durable power of attorney is a power of attorney by which a principal designates another ~~his~~ as the principal's attorney in fact in writing and the writing contains the words "This power of attorney is not affected by subsequent disability or incapacity of the principal or by lapse of time," or "This power of attorney becomes effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred is exercisable notwithstanding the principal's subsequent disability or incapacity, and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

SECTION 12. AMENDMENT. Section 30.1-30-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-30-02. (5-502) Durable power of attorney not affected by disability or lapse of time. All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were competent and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

CHAPTER 402

SENATE BILL NO. 2307
(Senator Nalewaja)
(Representatives R. Berg, Bernstein)

ESTATE INVENTORY DUE DATE

AN ACT to amend and reenact subsection 1 of section 30.1-18-06 of the North Dakota Century Code, relating to the duties of personal representatives of decedents' estates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 30.1-18-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Within ~~three~~ six months after ~~his~~ appointment, or nine months after the death of the decedent, whichever is later, a personal representative, who is not a special administrator or a successor to another representative who has previously discharged this duty, shall prepare and file or mail an inventory of property owned by the decedent at the time of ~~his~~ the decedent's death, listing it with reasonable detail, and indicating as to each listed item, its fair market value as of the date of the decedent's death, and the type and amount of any encumbrance that may exist with reference to any item.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 403

SENATE BILL NO. 2434
(Senators Krauter, O'Connell)
(Representatives Brokaw, Urlacher, Kingsbury)

ATTORNEYS' FEES FROM DECEDENTS' ESTATES

AN ACT to amend and reenact section 30.1-18-21 of the North Dakota Century Code, relating to attorneys' fees payable from a decedent's estate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-18-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-18-21. (3-721) Proceedings for review of employment of agents and compensation of personal representatives and employees of estate. After notice to all interested persons, or on petition of an interested person, or on appropriate motion if administration is supervised, the propriety of employment of any person by a personal representative including any attorney, auditor, investment adviser, or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for ~~his~~ that person's own services, including services rendered as attorney, may be reviewed by the court. If the amount of attorneys' fees is based upon the value of the decedent's estate, the fee agreement must be in writing and mailed to all parties who are heirs of the estate pursuant to the last will and testament of the decedent. If the decedent died intestate, notice must be provided to all heirs of the estate in accordance with chapter 30.1-03. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 404

HOUSE BILL NO. 1054
(Legislative Council)
(Interim Judiciary Committee)

NOTICE TO ESTATE CREDITORS

AN ACT to amend and reenact sections 30.1-19-01, 30.1-19-02, subsection 1 of section 30.1-19-03, subsection 1 of section 30.1-19-07, and section 30.1-21-03 of the North Dakota Century Code, relating to notice to creditors with claims against decedents' estates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-19-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-19-01. (3-801) Notice to creditors. Unless notice has already been given under this section, a personal representative upon ~~his~~ appointment may publish a notice to creditors whose identities are not reasonably ascertainable. The notice must be published once a week for three successive weeks in a newspaper of general circulation in the county ~~announcing his~~. If the personal representative elects to publish a notice to creditors then, in addition to publishing the notice to creditors, the personal representative shall mail a copy of the notice to those creditors whose identities are known to the personal representative or are reasonably ascertainable and who have not already filed a claim. The notice must announce the personal representative's appointment and address and ~~notifying~~ notify creditors of the estate to present their claims within three months after the date of the first publication or mailing of the notice or be forever barred. For the purpose of this section, a reasonably ascertainable creditor includes a creditor who regularly submits billings to the decedent or the decedent's estate and to whose billings the personal representative has had access.

SECTION 2. AMENDMENT. Section 30.1-19-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-19-02. (3-802) Statutes of limitations. Unless an estate is insolvent, the personal representative, with the consent of all successors whose interests would be affected, may waive any defense of limitations available to the estate. If the defense is not waived, no claim ~~which that~~ was barred by any statute of limitations at the time of the decedent's death ~~shall may~~ be allowed or paid. The running of any statute of limitations measured from some other event than death and advertisement and mailing of notice for claims against a decedent is suspended during the three months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under section 30.1-19-04 is equivalent to commencement of a proceeding on the claim.

SECTION 3. AMENDMENT. Subsection 1 of section 30.1-19-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:
 - a. Within three months after the date of the first publication and mailing of notice to creditors if notice is given in compliance with section 30.1-19-01; provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state.
 - b. Within three years after the decedent's death, if notice to creditors has not been published and mailed.

SECTION 4. AMENDMENT. Subsection 1 of section 30.1-19-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Upon the expiration of three months from the date of the first publication and mailing of the notice to creditors, the personal representative shall proceed to pay the claims allowed against the estate in the order of priority prescribed, after making provision for homestead, family, and support allowances, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims ~~which~~ that may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for the purpose, or by appropriate motion if the administration is supervised, a claimant whose claim has been allowed but not paid as provided herein may secure an order directing the personal representative to pay the claim to the extent that funds of the estate are available for the payment.

SECTION 5. AMENDMENT. Section 30.1-21-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-21-03. (3-1003) Closing estates - By sworn statement of personal representative.

1. Unless prohibited by order of the court and except for estates being administered in supervised administration proceedings, a personal representative may close an estate by filing with the court a verified statement stating that he the personal representative, or a prior personal representative whom he the personal representative has succeeded, has ~~or have~~:
 - a. Fully administered the estate of the decedent by making payment, settlement, or other disposition of all claims ~~which~~

that were presented, expenses of administration, and estate, inheritance, and other death taxes, except as specified in the statement, and ~~that~~ by distributing the assets of the estate have been distributed to the persons entitled. If any claims remain undischarged, the statement ~~shall~~ must state whether the personal representative has distributed the estate subject to possible liability with the agreement of the distributees or ~~it shall~~ the statement must state in detail other arrangements ~~which that~~ that have been made to accommodate outstanding liabilities.

- b. Sent a copy thereof to all distributees of the estate and to all creditors or other claimants of whom ~~he~~ the personal representative is aware whose claims are neither paid nor barred and has furnished a full account in writing of ~~his~~ the personal representative's administration to the distributees whose interests are affected thereby.

If the personal representative has published and mailed notice to creditors as provided by section 30.1-19-01, ~~he~~ the personal representative may not file the verified statement until three months after the date of the first publication and mailing.

2. If no proceedings involving the personal representative are pending in the court one year after the closing statement is filed, the appointment of the personal representative terminates.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 405

HOUSE BILL NO. 1480
(Representatives Ulmer, R. Larson)
(Senators Heinrich, Yockim)

INCAPACITATED PERSON GUARDIAN

AN ACT to create two new sections to chapter 30.1-28 of the North Dakota Century Code, relating to guardians of incapacitated persons; to amend and reenact sections 30.1-26-01, 30.1-28-01, 30.1-28-02, 30.1-28-03, 30.1-28-04, 30.1-28-05, 30.1-28-06, 30.1-28-07, 30.1-28-08, 30.1-28-09, 30.1-28-10, and 30.1-28-12 of the North Dakota Century Code, relating to guardians of incapacitated persons; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-26-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-26-01. (5-101) Definitions and use of terms. Unless otherwise apparent from the context, in this title:

1. "Alternative resource plan" means a plan that provides an alternative to guardianship, using available support services and arrangements which are acceptable to the alleged incapacitated person. The plan may include the use of providers of service such as visiting nurses, homemakers, home health aides, personal care attendants, adult day care and multi-purpose senior citizen centers; home and community based care, county social services, and developmental disability services; powers of attorney, representative and protective payees; and licensed congregate care facilities.
2. "Least restrictive form of intervention" means that the guardianship imposed on the ward must compensate for only those limitations necessary to provide the needed care and services, and that the ward must enjoy the greatest amount of personal freedom and civil liberties consistent with the ward's mental and physical limitations.
3. "Incapacitated person" means any adult person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, ~~chronic use of drugs, chronic intoxication, or other cause (except minority)~~ or chemical dependency to the extent that he the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person that person's matters of residence, education, medical treatment, legal affairs, vocation, finance, or other matters, or which incapacity endangers the person's health or safety.

- 2- "Person with limited capacity" means a person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except minority, but who is able to make independently some, but not all, of the decisions necessary for that person's own care and the management of that person's property.
- 3- 4. A "protective proceeding" is a proceeding under the provisions of section 30.1-29-01 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.
- 4- 5. A "protected person" is a minor or other person for whom a conservator or limited conservator has been appointed or other protective order has been made.
- 5- 6. A "ward" is a person for whom a guardian or limited guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

SECTION 2. AMENDMENT. Section 30.1-28-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-01. (5-301) Testamentary appointment of guardian for incapacitated person.

1. The guardian spouse or guardian parent of an adjudicated incapacitated person may, by will, appoint a successor guardian of the incapacitated person. A testamentary appointment by a guardian spouse or guardian parent becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care caring for the incapacitated person or to his the nearest adult relative of the incapacitated person, the successor guardian files acceptance of appointment in the court in which the will is informally or formally probated, if prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.
2. The spouse of a married incapacitated person may, by will, appoint a guardian of the incapacitated person. The appointment becomes effective when, after having given seven days' prior written notice of his intention to do so to the incapacitated person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.
- 3- This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

- 4- 3. On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this chapter.

SECTION 3. AMENDMENT. Section 30.1-28-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-02. (5-302) Venue. The venue for guardianship proceedings for ~~an incapacitated person~~ a proposed ward is in the place where the ~~incapacitated person~~ proposed ward resides or is present and expected to remain during the pendency of the proceedings. ~~If the incapacitated person is admitted to an institution pursuant to order of a county court, venue is also in the county in which that court sits~~ Notwithstanding section 30.1-02-03, the proposed ward may demand change of venue to either the county of residence or the county where the proposed ward is present. The court shall grant the demand if it is filed and served upon the petitioner more than three days before the hearing. If the demand is filed within three days of the hearing, the court may grant the demand upon good cause shown.

SECTION 4. AMENDMENT. Section 30.1-28-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-03. (5-303) Procedure for court appointment of a guardian of an incapacitated person.

1. ~~The incapacitated person or any~~ Any person interested in ~~his~~ the welfare of an ~~allegedly~~ incapacitated person may petition for ~~a finding of incapacity and the appointment of a guardian, limited or general.~~ No filing fee under this or any other section may be required when a petition for guardianship of an incapacitated person is filed by a member of the individual ~~habilitation treatment~~ plan team for the ~~alleged~~ incapacitated person or ~~by~~ any state employee in the performance of official duties.
2. The petition for appointment of a guardian must state:
 - a. The name, address, and corporate or agency status of the petitioner, and its connection with or relationship to the proposed ward;
 - b. The name, age, and address of the proposed ward;
 - c. The name and address of any person or institution having care or custody over the proposed ward;
 - d. The names and addresses of the spouse, parents, and adult children or, if none, any adult siblings and any adult with whom the proposed ward resides in a private residence, or, if none, the nearest adult relative;

- e. A brief description of and the approximate value of the real and personal property and income of the proposed ward, so far as they are known to the petitioner;
 - f. The extent of the guardianship sought, including whether the nominated guardian seeks to have full authority, limited authority, or no authority in each area of residential, educational, medical, legal, vocational, and financial decisionmaking;
 - g. The occupation and qualifications of the proposed guardian;
 - h. The name and address of the attorney, if known, who most recently represented the proposed ward; and
 - i. A statement alleging specific facts establishing the necessity for the appointment of a guardian.
3. Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall, appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a act as guardian ad litem. The person alleged to be incapacitated shall be examined by, appoint a physician appointed by the court who shall submit his report in writing to the court and shall also be interviewed by or clinical psychologist to examine the proposed ward, and appoint a visitor sent by the court. The visitor also shall to interview the person seeking appointment as proposed guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made. The visitor shall submit his report in writing to the court. The person appointed as visitor may not also be appointed as guardian ad litem for the person alleged to be incapacitated the proposed ward.
4. The duties of the attorney include:
- a. Personally interviewing the proposed ward;
 - b. Explaining the guardianship proceeding to the proposed ward in the language, mode of communication, and terms that the proposed ward is most likely to understand, including the nature and possible consequences of the proceeding, the right to which the proposed ward is entitled, and the legal options that are available; and
 - c. Representing the proposed ward as guardian ad litem. If the appointed attorney or other attorney is retained by the proposed ward to act as an advocate, the attorney shall promptly notify the court, and the court may determine whether the attorney should be discharged from the duties of guardian ad litem.

5. The physician or clinical psychologist shall examine the proposed ward and submit a written report to the court. The written report must contain:
 - a. A description of the nature and degree of any current incapacity or disability, including the medical or psychological history, if reasonably available;
 - b. A medical prognosis or psychological evaluation specifying the estimated severity and duration of any current incapacity or disability;
 - c. A statement as to how or in what manner any underlying condition of physical or mental health affects the proposed ward's ability to provide for personal needs; and
 - d. A statement as to whether any current medication affects the demeanor of the proposed ward or the ability of the proposed ward to participate fully in any court proceeding or in any other procedure required by the court or by court rule.
6. The visitor shall have the following duties:
 - a. To meet, interview, and consult with the proposed ward regarding the guardianship proceeding, including explaining the purpose for the interview in a manner the proposed ward can reasonably be expected to understand.
 - b. To ascertain the proposed ward's views concerning the proposed guardian, the powers and duties of the proposed guardian, the proposed guardianship, and the scope and duration thereof.
 - c. To interview the person seeking appointment as guardian.
 - d. To visit the proposed ward's present place of residence.
 - e. To discuss an alternative resource plan with the proposed ward, if appropriate.
 - f. To obtain other relevant information as directed by the court.
 - g. To submit a written report to the court.
 - h. The visitor's written report must contain:
 - (1) A description of the nature and degree of any current impairment of the proposed ward's understanding or capacity to make or communicate decisions;
 - (2) A statement of the qualifications and appropriateness of the proposed guardian;
 - (3) Recommendations, if any, on the powers to be granted to the proposed guardian, including an evaluation of the proposed ward's capacity to perform the functions enumerated under subsections 3 and 4 of section 30.1-28-04; and

- (4) An assessment of the capacity of the proposed ward to perform the activities of daily living.
- 3- Where possible without undue delay and expense beyond the ability to pay of the allegedly incapacitated person or any other person paying costs, the court, in formulating the judgment, may utilize the service of any public or charitable agency or nonprofit corporation that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court regarding the most appropriate form of state intervention in his affairs.
7. The person alleged to be incapacitated is entitled to proposed ward must be present at the hearing in person, unless good cause is shown for the absence. Good cause does not consist only of the physical difficulty of the proposed ward to attend the hearing. The proposed ward has the right and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, and to cross-examine witnesses, including the court-appointed physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated proposed ward or his the proposed ward's counsel so requests.
8. The court shall take all necessary steps to make the courts and court proceedings accessible and understandable to impaired persons. Accordingly, the court may convene temporarily, or for the entire proceeding, at any other location if it is in the best interest of the proposed ward.

SECTION 5. AMENDMENT. Section 30.1-28-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-04. (5-304) Findings - Order of appointment.

1. The court shall exercise the authority conferred in this chapter consistent with the maximum self-reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure. A guardianship order may limit the guardian's powers in areas including residential, educational, medical, legal, vocational and financial decisions. The court shall determine in all cases in which a guardian is appointed whether the incapacitated person is mentally incompetent and as such is not qualified to vote.
2. The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the incapacitated person. Alternatively, the court may dismiss the proceeding or enter any other appropriate order, including the involvement of an advocate or the establishment of financial trusts or special bank accounts on behalf of the incapacitated person. At a hearing held under this chapter, the court shall:

- a. Hear evidence that the proposed ward is an incapacitated person. Age, eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding of incapacity;
- b. Appoint a guardian and confer specific powers of guardianship only after finding in the record based on clear and convincing evidence that:
 - (1) The proposed ward is an incapacitated person;
 - (2) There is no available alternative resource plan that is suitable to safeguard the proposed ward's health, safety, or habilitation which could be used instead of a guardianship;
 - (3) The guardianship is necessary as the best means of providing care, supervision, or habilitation of the ward; and
 - (4) The powers and duties conferred upon the guardian are appropriate as the least restrictive form of intervention consistent with the ability of the ward for self-care.
3. Except upon specific findings of the court, no ward may be deprived of any of the following legal rights: to vote, to seek to change marital status, to obtain or retain a motor vehicle operator's license, or to testify in any judicial or administrative proceedings.
4. The court may find that the ward retains other specific rights.
- 3- 5. The court may appoint a limited guardian if it is satisfied that the person for whom a guardian is sought is a person with limited capacity and that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person with limited capacity. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.
- 4- The court may, at the time of appointment or later, on its own motion or on appropriate petition or motion of the incapacitated person or other interested person, limit the powers of a guardian otherwise conferred by this section and thereby create a limited guardianship. Any limitation on the statutory power of a guardian of an incapacitated person shall be endorsed on the guardian's letters. The order appointing a guardian confers upon the guardian only those powers and duties specified in the order. In addition to any other powers conferred upon the guardian, the court's order must state whether the guardian has no authority, general authority, or limited authority to make decisions on behalf of the ward in each of the areas of residential, educational, medical, legal, vocational, and financial decisionmaking. A grant of limited authority must specify the limitations upon the authority of the guardian or the authority retained by the ward.

SECTION 6. AMENDMENT. Section 30.1-28-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-05. (5-305) Acceptance of appointment - Consent to jurisdiction - Order - Letters of guardianship.

1. By accepting appointment, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of any proceeding so instituted shall be delivered to served upon the guardian or mailed to him by ordinary mail at his address as listed in the court records and to his address as then known to by the petitioner.
2. A copy of the order appointing the guardian must be served upon the ward and the ward's attorney by the petitioner. The order must contain the name and address of the guardian as well as notice of the ward's right to appeal the guardianship appointment and of the ward's right to seek alteration or termination of the guardianship at any time.
3. Letters of guardianship must contain:
 - a. The name, address, and telephone number of the guardian;
 - b. The name, address, and telephone number of the ward;
 - c. Specifications of the guardian's authority to make decisions on behalf of the ward in each of the following areas: residential, educational, medical, legal, vocational, and financial. If limited authority has been granted in any area, the letters must describe the nature of the limitations;
 - d. Specification of any other powers or authority conferred upon the guardian; and
 - e. Specification of limitations by the court upon the rights and privileges of the ward in matters not governed by powers of the guardian, such as voting, marriage, and driving.
4. The letters must issue to the guardian. The court shall mail copies to the ward and the ward's counsel.

SECTION 7. AMENDMENT. Section 30.1-28-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-06. (5-306) Termination of guardianship ~~for incapacitated person~~. The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, except, the guardian may arrange for a deceased ward's burial and refer the ward's estate to probate, if no other person is available to perform those acts, the determination of incapacity of the guardian, or upon removal or resignation as provided in section 30.1-28-07. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect his the guardian's liability for prior acts nor his obligation to account for funds and assets of his the ward.

SECTION 8. AMENDMENT. Section 30.1-28-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-07. (5-307) Removal or resignation of guardian - Termination of ~~incapacity~~ guardianship.

1. On petition of the ward or any person interested in ~~his~~ the ward's welfare, the court may remove a guardian and appoint a successor if in the best interests of the ward. On petition of the guardian, the court may accept ~~his~~ the guardian's resignation and make any other order which may be appropriate.
2. ~~An order adjudicating incapacity may specify a minimum period, not exceeding one year, during which no petition for an adjudication that the ward is no longer incapacitated may be filed without special leave. Subject to this restriction, the~~ The ward or any person interested in ~~his~~ the ward's welfare may petition for an order that ~~he~~ the ward is no longer incapacitated, and for removal ~~or resignation~~ of the guardian. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.
3. Before removing a guardian, accepting the resignation of a guardian, or ~~ordering that a ward's incapacity has on finding that the ward is no longer incapacitated and ordering the guardianship terminated~~, the court, following the same procedures to safeguard the rights of the ward as apply to a petition for appointment of a guardian, may send a visitor to the residence of the present guardian and to the place where the ward resides or is detained, to observe conditions and report in writing to the court.

SECTION 9. AMENDMENT. Section 30.1-28-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-08. (5-308) Visitor in guardianship proceedings. A visitor ~~is, with respect to~~ in guardianship proceedings, is a person who is ~~trained in law, nursing, or social work~~ and is an officer, employee, or special appointee of the court with no personal interest in the proceedings.

SECTION 10. AMENDMENT. Section 30.1-28-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-09. (5-309) Notices in guardianship proceedings.

1. In a proceeding for the appointment or removal of a guardian ~~of an incapacitated person~~ or for an alteration or termination of a guardianship other than ~~for the appointment of a temporary guardian or for the temporary suspension of a guardian~~, notice of hearing shall be given to each of the following:
 - a. The ward or the ~~person alleged to be incapacitated~~ proposed ward and ~~his~~ the ward's or proposed ward's spouse, parents, and adult children-;
 - b. Any person, corporation, or institution who is serving as ~~his~~ the ward's guardian, attorney in fact, representative payee for public benefits, or conservator, or who has ~~his~~ the ward's care and custody-;

- c. in case If no other person is notified under subdivision a, at least one of his closest adult relatives; if any can be found then the adult siblings and any adult with whom the proposed ward resides in a private residence, or if none can be found, any known adult relative; and
 - d. The attorney for the proposed ward, the visitor, and the physician or clinical psychologist, together with a copy of the respective order of appointment for each.
2. Notice shall be served personally on the alleged incapacitated person ward or proposed ward, and his the ward's or proposed ward's spouse and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found within the state, and to all other persons except the alleged incapacitated person ward or proposed ward shall be given as provided in section 30.1-03-01. Waiver of notice by the person alleged to be incapacitated ward or proposed ward is not effective unless he the ward or proposed ward attends the hearing or his the ward's or proposed ward's waiver of notice is confirmed in an interview with the visitor. Representation of the alleged incapacitated person by a guardian ad litem is not necessary.
 3. The notice must be printed with not less than double-spaced twelve-point type.

SECTION 11. AMENDMENT. Section 30.1-28-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-10. (5-310) Temporary guardians. If an incapacitated person has no guardian and an emergency exists; the court may exercise the power of a guardian pending notice and hearing. If an appointed guardian is not effectively performing his duties and the court further finds that the welfare of the incapacitated person requires immediate action; it may, with or without notice; appoint a temporary guardian for the incapacitated person for a specified period not to exceed six months.

1. The court may exercise the power of a guardian pending notice and hearing or, with or without notice, appoint a temporary guardian for a specified period of time, not to exceed ninety days, if:
 - a. An alleged incapacitated person has no guardian and an emergency exists; or
 - b. An appointed guardian is not effectively performing the guardian's duties, and the court finds that the welfare of the ward requires immediate action.
2. A temporary guardian is entitled to the care and custody of the ward and the authority of any permanent guardian previously appointed by the court is suspended so long as a temporary guardian has authority. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects the provisions of this title concerning guardians apply to temporary guardians.

Appointment of temporary guardian does not have the effect of an adjudication of incapacity or the effect of limitation on the legal rights of the ward other than those specified in the court order. Appointment of a temporary guardian is not evidence of incapacity.

SECTION 12. AMENDMENT. Section 30.1-28-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-12. (5-312) General powers and duties of guardian.

1. A guardian of an incapacitated person has only the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular, and without qualifying the foregoing, a guardian has the following powers and duties, except as modified by order of the court when the guardianship is limited: powers and duties specified by the court.
- a- 2. To the extent that it is consistent with the terms of any an order by a court of competent jurisdiction relating to detention or commitment of the ward; he is, the guardian is entitled to custody of the person of his the ward and may establish the ward's place of abode residence within or without this state. However, no guardian may voluntarily admit a ward to a mental health facility, state institution, or secured unit of a long-term care facility for a period of more than forty-five days without a mental health commitment proceeding or other court order. Notwithstanding the other provisions of this subdivision, the guardian may readmit a ward to a mental health facility, state institution, or secured unit of a long-term care facility within sixty days of discharge from that institution, if the original admission to the facility, institution, or unit had been authorized by the court.
- b- 3. If entitled to custody of his the ward, he shall the guardian should make provision for his the care, comfort, and maintenance of the ward and, whenever appropriate, arrange for his the ward's training, and education, or habilitative services. Without regard to custodial rights of the ward's person; he The guardian shall take reasonable care of his the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his ward is in need of protection.
- c- 4. A guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service. Notwithstanding general or limited authority to make medical decisions on behalf of the ward, no guardian may consent to psycho-surgery, abortion, sterilization, or experimental treatment of any kind unless the procedure is first approved by order of the court.
- d- 5. When exercising the authority granted by the court, the guardian shall safeguard the civil rights and personal autonomy of the ward to the fullest extent possible by:

- a. Involving the ward as fully as is practicable in making decisions with respect to the ward's living arrangements, health care, and other aspects of the ward's care; and
 - b. Ensuring the ward's maximum personal freedom by using the least restrictive forms of intervention and only as necessary for the safety of the ward or others.
6. If no conservator for the estate of the ward has been appointed and if the guardian has been granted authority to make financial decisions on behalf of the ward, ~~he~~ the guardian may:
- ~~↔~~ a. Institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform ~~his~~ that duty.
 - ~~↔~~ b. Receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; but, ~~he~~ the guardian may not use funds from ~~his~~ the ward's estate for room and board which ~~he, his~~ the guardian or the guardian's spouse, parent, or child have furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the ward, if notice is possible. ~~He must~~ The guardian shall exercise care to conserve any excess for the ward's needs.
 - ~~e. A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule.~~
- ~~f.~~ 7. If a conservator has been appointed, all of the ward's estate received by the guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this title, and the guardian must account to the conservator for funds expended.
8. A guardian shall make written reports to the court at such times as the court shall require concerning the condition and affairs of the ward. The report must include:
- ~~↔~~ a. The name, address, and telephone number of the ward;
 - b. The name, address, and telephone number of the guardian;
 - c. A brief written description of the condition of the ward;
 - d. The name and address of any person or institution having care or custody of the ward;
 - e. If the guardian has authority to make residential decisions for the ward, a statement of the nature of the ward's care and of any changes or proposals for changes in the living situation of the ward;

- f. If the guardian has authority to make medical decisions, a summary of the medical treatment authorized by the guardian since the date of the last report;
 - g. The guardian's plans for maintaining the well-being of the ward and facts indicating the need for continuation or cessation of the guardianship or for any increase or limitation of the powers of the guardian;
 - h. A complete accounting of the financial transactions of the guardian undertaken on behalf of the ward or in connection with the guardianship; and
 - i. Any other information the court may require.
9. Copies of the guardian's annual report to the court and of any other reports required by the court must be mailed to the ward. The ward's copy must be accompanied by a statement, printed with not less than double-spaced twelve-point type, of the ward's right to seek alteration, limitation, or termination of the guardianship at any time.
- 2- 10. Any guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward; and The guardian is entitled to receive reasonable sums for his services and for room and board furnished to the ward as approved by the court or as agreed upon between him the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The guardian may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

SECTION 13. Two new sections to chapter 30.1-28 of the North Dakota Century Code are hereby created and enacted to read as follows:

Reports and accounts - Failure of guardian to file.

- 1. If a guardian fails to render any report or account within the time provided by law or the order of the court, or fails to settle the estate according to the order of the court, the court may, upon its own motion, or upon petition of any interested party, issue an order compelling the guardian to show cause why the guardian should not immediately make and file the report or account.
- 2. If a guardian fails, neglects, or refuses to file a report or accounting after having been cited by the court to do so, the court may, upon its own motion or upon the motion of any interested party, issue an order to show cause that the guardian be brought before the court and show why the guardian should not be held in contempt.

Prior guardianships. Guardianships established prior to July 1, 1990, must be reviewed by the court in accordance with this Act. Guardians and wards under such previously established guardianships must be notified by the court in writing in language reasonably understandable to them of their rights and duties under this chapter.

SECTION 14. EFFECTIVE DATE. This Act becomes effective on July 1, 1990.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 406

SENATE BILL NO. 2306
(Senator Nalewaja)
(Representatives R. Berg, Bernstein)

GUARDIAN NOMINATION BY INCAPACITATED PERSON

AN ACT to amend and reenact section 30.1-28-11 of the North Dakota Century Code, relating to the appointment of a guardian of an incapacitated person.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-28-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30.1-28-11. (5-311) Who may be guardian - Priorities.

1. Any competent person or a designated person from a suitable institution, agency, or nonprofit group home may be appointed guardian of an incapacitated person. No institution, agency, or nonprofit group home providing care and custody of the incapacitated person may be appointed guardian. However, if no one else can be found to serve as guardian, an employee of an agency, institution, or nonprofit group home providing care and custody may be appointed guardian if the employee does not provide direct care to the proposed ward and the court makes a specific finding that the appointment presents no substantial risk of a conflict of interest.
2. Unless lack of qualification or other good cause dictates the contrary, the court shall appoint a guardian in accordance with the incapacitated person's most recent nomination in a durable power of attorney.
3. Except as provided in subsection 2, persons who are not disqualified have priority for appointment as guardian in the following order:
 - a. A person nominated by the incapacitated person prior to being determined to be incapacitated, when nominated by means other than provided in subsection 2, if the incapacitated person is fourteen or more years of age and, in the opinion of the court, acted with or has sufficient mental capacity to make an intelligent choice.
 - b. The spouse of the incapacitated person.
 - ~~b.~~ c. An adult child of the incapacitated person.

- ~~c.~~ d. A parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent.
 - ~~d.~~ e. Any relative of the incapacitated person with whom the incapacitated person has resided for more than six months prior to the filing of the petition.
 - ~~e.~~ f. Any relative or friend who has maintained significant contacts with the incapacitated person or a designated person from a volunteer agency.
 - ~~f.~~ g. A nonprofit corporation established to provide guardianship services; provided, that the corporation does not provide direct care to incapacitated persons. The corporation shall file with the court the name of an employee, volunteer, or other person from the corporation who is directly responsible for the guardianship of each incapacitated person, and shall notify the court in the event the person for any reason ceases to so act, or if a successor is named.
 - ~~g.~~ h. Any appropriate government agency, including county social service agencies, except as limited by subsection 1.
 - ~~h.~~ i. A person nominated by the person who is caring for or paying benefits to the incapacitated person.
4. With respect to persons having equal priority, the court shall select the one it deems best qualified to serve. The court, acting in the best interest of the incapacitated person, may pass over a person having priority and appoint a person having a lower priority.

Approved April 6, 1989

Filed April 7, 1989

JUDICIAL PROOF

CHAPTER 407

HOUSE BILL NO. 1644
(Gerntholz, Ulmer)

MUNICIPAL COURT WITNESS COMPENSATION

AN ACT to amend and reenact section 31-01-16.2 of the North Dakota Century Code, relating to compensation of municipal court witnesses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 31-01-16.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

31-01-16.2. Compensation of municipal court witnesses. A witness in municipal court ~~shall be~~ is entitled to receive ~~the amount of five dollars~~ compensation for ~~each hour time~~ necessarily spent in municipal court. The governing body of the city shall establish the amount of compensation, but in no instance shall may compensation be more than seven twenty-five dollars and fifty cents, or less than five dollars, for any such appearance each day necessarily spent in municipal court.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 408

SENATE BILL NO. 2308
(Senator Ingstad)
(Representative Shaft)

MEDIATION EVIDENCE INADMISSIBILITY

AN ACT to create and enact a new section to chapter 31-04 of the North Dakota Century Code, relating to the inadmissibility of evidence obtained during mediation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 31-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Mediation - Inadmissibility of evidence - Exception. When persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a dispute, evidence of anything said or of any admission made in the course of the mediation is inadmissible as evidence and disclosure may not be compelled in any subsequent civil proceeding except as provided in this section. This section does not limit the compulsion nor the admissibility of evidence if:

1. The evidence relates to a crime, civil fraud, or a violation under the Uniform Juvenile Court Act;
2. The evidence relates to a breach of duty by the mediator;
3. The validity of the mediated agreement is in issue; or
4. All persons who conducted or otherwise participated in the mediation consent to disclosure.

Approved April 11, 1989
Filed April 12, 1989

JUDICIAL REMEDIES

CHAPTER 409

SENATE BILL NO. 2422
(Senator Kelsh)
(Representatives Hokana, Stofferahn)

EMERGENCY OBSTETRICS IMMUNITY

AN ACT to create and enact a new section to chapter 32-03.1 of the North Dakota Century Code, relating to immunity from civil liability for certain physicians rendering emergency obstetrical care.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Emergency obstetrical services. A physician licensed under chapter 43-17 who renders emergency obstetrical care or assistance to a pregnant female in active labor who has not previously been cared for in connection with the pregnancy by the physician or by another person professionally associated with the physician and whose medical records are not reasonably available to the physician is not liable in any personal injury civil action for acts or omissions resulting from the rendering of that emergency care or assistance, unless it is plainly alleged in the complaint and later proven that the physician's acts or omissions constituted intentional misconduct or gross negligence. The immunity from civil liability provided by this section does not extend to a physician who renders emergency obstetrical care or assistance with an expectation of remuneration or who collects a fee for rendering that care or assistance.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 410

SENATE BILL NO. 2109
(Committee on Human Services and Veterans Affairs)
(At the request of the Board of Nursing)

EMERGENCY TREATMENT BY NURSES

AN ACT to create and enact two new sections to chapter 43-12.1 of the North Dakota Century Code, relating to emergency medical treatment by nurses; to amend and reenact section 32-03.1-06 of the North Dakota Century Code, relating to exceptions to laws superseded by the Good Samaritan Act; and to repeal sections 43-12-33 and 43-12-34 of the North Dakota Century Code, relating to emergency medical treatment by nurses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-03.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-03.1-06. Limited repealer. This chapter supersedes any conflicting provision of law which is inconsistent with this chapter except sections 23-27-04.1, 32-03-40, 32-03-42, 39-08-04.1, ~~43-12-33, 43-12-34~~ section 2 of this Act, section 3 of this Act, 43-17-37, and 43-17-38.

SECTION 2. A new section to chapter 43-12.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Emergency treatment by nurses. Any nurse licensed under this chapter, who, in good faith, renders in this state emergency care at the scene of an emergency, may render only such emergency care as in the nurse's judgment is at the time indicated.

SECTION 3. A new section to chapter 43-12.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Emergency treatment by licensed nurses during disaster. In the event of a disaster, a licensed nurse may perform therapeutic measures delegated by medical authority or may initiate therapeutic measures until medical direction is available.

SECTION 4. REPEAL. Sections 43-12-33 and 43-12-34 of the North Dakota Century Code are hereby repealed.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 411

HOUSE BILL NO. 1580
(Representatives J. DeMers, Ring)
(Senator Heinrich)

GARNISHMENT WAGE LIMITATIONS

AN ACT to amend and reenact section 32-09.1-03 of the North Dakota Century Code, relating to the exemption of wages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-09.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-09.1-03. Restriction on garnishment of earnings.

1. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment may not exceed the lesser of:
 - a. Twenty-five percent of disposable earnings for that week.
 - b. The amount by which disposable earnings for that week exceed forty times the federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended [Pub. L. 95-151; 91 Stat. 1245; 29 U.S.C. 206] or any equivalent multiple thereof prescribed by regulation by the secretary of labor in case of earnings for any pay period other than a week, in effect at the time the earnings are payable.
2. The maximum amount subject to garnishment under subsection 1 for any workweek must be reduced by twenty dollars for each dependent family member residing with the garnishment debtor.
3. The restrictions of subsection 1 do not apply in the case of:
 - a. Any order of any court for the support of any person.
 - b. Any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.
 - c. Any debt due for any state or federal tax.
- ~~3.~~ 4. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed:
 - a. Where such individual is supporting a spouse or dependent child other than a spouse or child with respect to whose support such

order is used, fifty percent of the individual's disposable earnings for that week; and

- b. Where such individual is not supporting a spouse or dependent child other than a spouse or child with respect to whose support such order is used, sixty percent of the individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the fifty percent specified in subdivision a shall be deemed to be fifty-five percent and the sixty percent specified in subdivision b shall be deemed to be sixty-five percent, if and to the extent that the earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

- ~~4~~ 5. No court of this state may make, execute, or enforce any order or process in violation of this section.

Approved April 10, 1989

Filed April 11, 1989

CHAPTER 412

HOUSE BILL NO. 1664

(Kretschmar)

(Approved by the Committee on Delayed Bills)

GOVERNMENT SELF-INSURANCE POOLS

AN ACT to create and enact a new subsection to section 32-12.1-02 of the North Dakota Century Code, relating to a definition of state agency; and to amend and reenact sections 32-12.1-05, 32-12.1-07, and 32-12.1-15 of the North Dakota Century Code, relating to liabilities of political subdivisions and participation by state agencies in government subdivisions self-insurance pools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 32-12.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"State agency" means an agency, board, commission, bureau, office, department, and institution of state government.

SECTION 2. AMENDMENT. Section 32-12.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-05. Liability insurance policy coverage. An insurance policy or insurance contract purchased by a political subdivision or state agency or a government self-insurance pool in which a political subdivision or state agency participates pursuant to this chapter may provide coverage for liabilities established by this chapter and may provide such additional coverage as the state agency or the governing body of the political subdivision determines to be appropriate. The insurer may not assert the defense of governmental immunity, but this chapter confers no right upon a claimant to sue an insurer directly. If a dispute exists concerning the amount or nature of the required insurance coverage, the dispute must be tried separately. The insurance coverage authorized by this chapter may be in addition to any insurance coverage purchased by a political subdivision or state agency pursuant to any other provision of law and if premium savings will result therefrom, any insurance policies purchased pursuant to this chapter or any other provision of law may be written for a period which exceeds one year.

SECTION 3. AMENDMENT. Section 32-12.1-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-07. Authorized insurance.

1. The insurance authorized by this chapter may be provided by:

- a. Self-insurance, which may be funded by appropriations to establish or maintain reserves for self-insurance purposes.
 - b. An insurance company authorized to do business in this state which the commissioner has determined to be responsible and financially sound, considering the extent of the coverage required.
 - c. Any combination of the methods of obtaining insurance authorized in subdivisions a and b.
2. Nothing in this chapter shall be construed to prohibit a political subdivision or state agency from uniting with other political subdivisions and state agencies in order to purchase liability insurance or to self-insure.

SECTION 4. AMENDMENT. Section 32-12.1-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

32-12.1-15. State agencies authorized to purchase insurance and participate in government self-insurance pools - Approval by commissioner of insurance.

1. After review by the commissioner of insurance and after receiving the commissioner's approval, the state or any state agency, ~~bureau or department~~ may insure either through an approved insurance company or through a government self-insurance pool formed under this chapter against liabilities provided by this chapter for its own protection or for the protection of any state employee. If a premium savings will result therefrom and the commissioner of insurance approves, the insurance policies may be taken out for more than one year, but in no event beyond a period of five years. No purchase of insurance pursuant to this section or participation in a government self-insurance pool may be construed as a waiver of any existing immunity to suit.
2. No employee of the state may be held liable in the employee's personal capacity for actions or omissions occurring within the scope of the employee's employment unless such actions or omissions constitute reckless or grossly negligent conduct, malfeasance, or willful or wanton misconduct.

Approved April 13, 1989

Filed April 13, 1989

CHAPTER 413

SENATE BILL NO. 2296
(Olson)

ABANDONED PERSONAL PROPERTY IN FORECLOSURE

AN ACT to create and enact a new section to chapter 32-19 of the North Dakota Century Code, relating to the disposition of personal property following completion of mortgage foreclosure actions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 32-19 of the North Dakota Century Code is hereby created and enacted to read as follows:

Abandoned personal property - Disposal by record title owner. The record title owner of real property sold under judgment of foreclosure or foreclosure by advertisement may retain and dispose of without legal process any personal property left on the real property thirty days after the issuance of a sheriff's deed. If the total estimated value of the personal property is five hundred dollars or more, the record title owner shall make reasonable efforts to notify in writing the mortgagor or person who was entitled to possession of the real property during the redemption period by certified mail at least fifteen days before disposing of the personal property. Service by mail is complete upon mailing. The record title owner is entitled to the proceeds from the sale of the personal property. This section applies only to tracts of land not exceeding forty acres.

Approved April 6, 1989
Filed April 7, 1989

LABOR AND EMPLOYMENT

CHAPTER 414

HOUSE BILL NO. 1608
(Representatives Huether, A. Williams)
(Senators Dotzenrod, Maixner)

INTEREST ON UNPAID WAGES

AN ACT to amend and reenact subsection 1 of section 34-14-09.1 of the North Dakota Century Code, relating to interest on unpaid wages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 34-14-09.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Interest on ~~such~~ the unpaid wages from the date ~~such~~ the wages are due until payment is made in full at the rate of ~~six percent per annum~~ as established by section 47-14-09; and

Approved March 22, 1989
Filed March 23, 1989

LIENS

CHAPTER 415

SENATE BILL NO. 2319
(Olson)

FUTURE ADVANCE LIEN PRIORITY

AN ACT to create and enact a new section to chapter 35-01 of the North Dakota Century Code, relating to priority of a lien securing future advances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 35-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Priority of liens securing future advances. A lien document containing a written provision securing the repayment of future advances, whether or not the lien creditor is obligated to make such future advances, has priority over all subsequent encumbrances to the extent of all sums advanced, with interest thereon, with the same effect as if the entire sum had been advanced at the time of the creation of the lien.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 416

HOUSE BILL NO. 1498
(Representatives Oban, R. Larson, Gerhardt)
(Senators Schoenwald, Heinrich)

VETERANS' ADMINISTRATION LOAN GUARANTEES

AN ACT to create and enact a new section to chapter 35-03 of the North Dakota Century Code, relating to loans insured or guaranteed by the United States veterans' administration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 35-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Mortgages insured or guaranteed by the United States veterans' administration - Notice. The following statement must be signed at the time of the loan application by both the borrower and lender on loans that are insured or guaranteed by the United States veterans' administration:

I understand that the veterans' administration may attempt to hold me liable for the guarantee it offers the lending institution on this mortgage. I understand that it may be alleged that I may remain liable for the amount guaranteed by the veterans' administration if this mortgage is foreclosed or if the property is sold by me without first obtaining an approved release of liability from the veterans' administration. I also understand that it may be alleged that North Dakota law governing deficiency judgments may not apply to the collection of loans guaranteed by the veterans' administration. By signing this statement, I am indicating that the contents of this statement have been explained to me by a loan officer representing the lending institution offering this mortgage loan.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 417

HOUSE BILL NO. 1287
(W. Williams, J. DeMers)

FINANCIAL INSTITUTION SECURITY INTEREST IN CROPS

AN ACT to amend and reenact section 35-05-01 of the North Dakota Century Code, relating to security agreements on crops.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-05-01. Security agreement on crops prohibited - Exceptions. Security interests in growing and unharvested crops are prohibited, and any security agreement purporting to create a security interest therein is void. The provisions of this section do not apply to any security interest or lien in favor of the United States, this state, any county, or any department or agency of any of them, including the Bank of North Dakota, nor to any ~~banking~~ financial institution as defined by section 6-01-02 or 21-04-01, nor to any other agricultural lending agency, nor to any security interest created by contract to secure money advanced or loaned for the purpose of paying government crop insurance premiums or to secure the purchase price or the rental or improvement of the land upon which the crops covered by the contract are to be grown.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 418

HOUSE BILL NO. 1607
(Watne, Brokaw)

CROP FINANCING STATEMENT COVERAGE

AN ACT to amend and reenact section 35-05-01.1 of the North Dakota Century Code, relating to financing statements covering crops and judicial remedies for misuse of a financing statement; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 35-05-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-05-01.1. Crop liens - Limitations - Exceptions - Remedies - Penalty. A security interest upon crops attaches only to the crop next maturing after the delivery of the security agreement. The effectiveness of a financing statement covering the crop lapses on the expiration of a period of five years from the date of filing unless terminated. The financing statement covering a crop cannot be used to enforce a security interest on any crop other than the crop listed in the security agreement. If the court finds a willful violation of this section, the court shall award a producer the reasonable expenses of maintaining an action, including reasonable attorney's fees. The provisions of this section do not apply to liens by contract given to secure the purchase price or the rental of land upon which the crops covered by the lien are to be grown.

Approved March 29, 1989
Filed March 30, 1989

* NOTE: Section 35-05-01.1 was also amended by section 1 of Senate Bill No. 2339, chapter 419.

CHAPTER 419

SENATE BILL NO. 2339
(Redlin)

CROP FINANCING STATEMENT DURATION

AN ACT to amend and reenact section 35-05-01.1 and subsection 2 of section 41-09-42 of the North Dakota Century Code, relating to crop liens and filing of financing statements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 35-05-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-05-01.1. Crop liens - Limitations - Exceptions. A security interest upon crops attaches only to the crop next maturing after the delivery of the security agreement. ~~The effectiveness of a financing statement covering the crop lapses on the expiration of a period of five years from the date of filing unless terminated.~~ The provisions of this section do not apply to liens by contract given to secure the purchase price or the rental of land upon which the crops covered by the lien are to be grown.

SECTION 2. AMENDMENT. Subsection 2 of section 41-09-42 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Except as provided in subsection 6 ~~and section 35-05-01.1~~, a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five-year period, whichever occurs later. Upon lapse, the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

Approved March 22, 1989
Filed March 23, 1989

* NOTE: Section 35-05-01.1 was also amended by section 1 of House Bill No. 1607, chapter 418.

CHAPTER 420

SENATE BILL NO. 2281
(Senator Nalewaja)
(Representative Solberg)

CROP SECURITY AGREEMENT LIMITATIONS

AN ACT to amend and reenact section 35-05-04 of the North Dakota Century Code, relating to the invalidity of crop security agreements that claim security interests in other personal property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-05-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-05-04. Security agreement not to include other personal property. A security agreement covering specific crops is not valid to create a security interest therein, nor entitled to be filed in the office of the register of deeds, if the security agreement contains any provision by which a security interest is claimed in any other personal property. For the purpose of this section, the term "crops" means crops, crop proceeds and products, supplementary price payments and payments made in lieu of crop proceeds, including crop insurance payments, for the period of time authorized in this section, but does not include diversion payments or third-party payments made to producers which are not directly related to crop production or proceeds.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 421

SENATE BILL NO. 2450
(Senator Freborg)
(Representative O. Hanson)

REPAIRMEN'S LIEN FOR WATERCRAFT

AN ACT to amend and reenact section 35-13-01 of the North Dakota Century Code, relating to repairman's liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-13-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-13-01. Repairman's lien authorized. Any blacksmith, machinist, farm equipment dealer, welder, garage keeper, mechanic, or aviation operator, having an established place of business within this state who makes, alters, or repairs any automobile, truck, engine, combine, tractor, farm equipment, well machine, ~~or~~ aircraft, or watercraft at the request of the owner or legal possessor of the property has a lien thereon, and on any accessories and parts placed upon the property, for reasonable charges for work done and materials furnished, until the charges are paid. If the cost of repair would exceed one thousand dollars or twenty-five percent of the value of the property, in its repaired condition, whichever is greater, and the repairman intends to have the entire repair bill constitute a lien with priority over the mortgage or financing statement of record, the repairman shall give notice by registered or certified mail to the recordholder of the mortgage or financing statement of the proposed repair, the estimated cost of repair, and the estimated value of the property in its repaired condition.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 422

HOUSE BILL NO. 1070
(Haugen)

MECHANIC'S LIEN IMPROVEMENTS

AN ACT to amend and reenact subsection 2 of section 35-27-01 of the North Dakota Century Code, relating to improvements for the purposes of obtaining a mechanic's lien.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 35-27-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Improve" means to build, erect, place, make, alter, remove, repair, or demolish any improvement upon, connected with, or beneath the surface of any land, or excavate any land, or furnish materials for any of such purposes, or dig or construct any fences, wells, or drains upon such improvement, or perform any labor or services upon such improvement; or perform any architectural services, construction staking, engineering, land surveying, mapping, or soil testing upon or in connection with the improvement; or perform any labor or services or furnish any materials in laying upon the real estate or in the adjoining street or alley any pipes, wires, fences, curbs, gutters, paving, sewer pipes or conduit, or sidewalks, or in grading, seeding, sodding, or planting for landscaping purposes, or in equipping any such improvement with fixtures or permanent apparatus.

Approved March 15, 1989
Filed March 15, 1989

CHAPTER 423

SENATE BILL NO. 2100
(Committee on Judiciary)

(At the request of the Commission on Uniform State Laws)

UNIFORM FEDERAL LIEN REGISTRATION ACT FILINGS

AN ACT to amend and reenact subsection 3 of section 35-29-02 of the North Dakota Century Code, relating to filings under the Uniform Federal Lien Registration Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 35-29-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens must be filed as follows:
 - a. If the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state.
 - b. If the person against whose interest the lien applies is a trust that is not covered by subdivision a, in the office of the secretary of state.
 - c. If the person against whose interest the lien applies is the estate of a decedent, in the office of the secretary of state.
 - d. In all other cases, in the office of the register of deeds of the county where the person against whose interest the lien applies resides at the time of filing of the notice of lien.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 424

HOUSE BILL NO. 1147
(Committee on Finance and Taxation)
(At the request of the Secretary of State)

FEDERAL TAX LIEN FILING FEES

AN ACT to amend and reenact section 35-29-05 of the North Dakota Century Code, relating to filing fees for federal tax liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-29-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-29-05. Fees.

1. The fee for filing and indexing each notice of lien is:
 - a. For a lien on real estate, five dollars, plus two dollars for the second and each succeeding page.
 - b. For a lien on tangible and intangible personal property, ~~three~~ five dollars.
 - c. For a certificate of discharge or subordination, ~~there is no fee~~ five dollars.
 - d. For a nonstandard statement when presented for filing, an additional fee of five dollars plus one dollar per page.
 - e. For all other notices, including a certificate of release or nonattachment, there is no fee five dollars.
2. The officer may not file or record an instrument under this chapter unless the person offering the instrument for filing or recording has first paid the requisite filing or recording fee.

Approved March 9, 1989
Filed March 9, 1989

LIVESTOCK

CHAPTER 425

HOUSE BILL NO. 1121

(Committee on Agriculture)

(At the request of the Livestock Sanitary Board)

LIVESTOCK SANITARY BOARD AUTHORITY

AN ACT to amend and reenact sections 36-01-06, 36-01-08, 36-01-13, 36-01-14, 36-01-16, 36-01-17, 36-01-18, 36-01-22, 36-01-28, 36-01-29, 36-01-30, 36-07-01, 36-07-02, 36-07-03, 36-07-08, 36-07-09, 36-07-10, 36-07-11, 36-07-13, 36-14-04, 36-14-05, 36-14-06, 36-14-07, 36-14-10, 36-14-11, 36-14-12, 36-14-13, 36-14-20, 36-15-06, 36-15-14, and 36-15-22 of the North Dakota Century Code, relating to livestock sanitary board duties and authority, rendering plants, contagious and infectious diseases, and bovine tuberculosis and brucellosis; to repeal sections 36-01-09, 36-01-21, 36-01-23, 36-01-24, 36-01-25, 36-01-26, 36-01-27, 36-15-13, 36-15-15, 36-15-16, 36-15-17, and 36-15-18 of the North Dakota Century Code, relating to livestock sanitary board duties and authority and to bovine tuberculosis and brucellosis; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 36-01-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-06. Executive officer to act as state veterinarian - Duties. The executive officer of the state livestock sanitary board shall act as the state veterinarian and ~~he~~ shall:

1. Ascertain, by personal examination or through reports from other accredited authorized representatives or agents of the board, all information which ~~he~~ can ~~obtain~~ be obtained regarding the existence of contagious, infectious, and epizootic diseases of animals.
2. Execute all orders, and rules, ~~and regulations~~ made by the board.
3. Execute all duties prescribed for the state veterinarian in title 36 and all duties and responsibilities otherwise authorized by the board that are necessary and proper in order to accomplish the business of the livestock sanitary board and to carry into effect the purposes of title 36.
4. Present at the quarterly meetings ~~thereof~~ of the board a detailed report of all matters connected with the work ~~done by him or his subordinates~~ of the state veterinarian and authorized representatives of the board during the quarter preceding said time since the last meeting.

* SECTION 2. AMENDMENT. Section 36-01-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-08. Duties of board - ~~May make rules and regulations~~ Rules. The state livestock sanitary board shall protect the health of the domestic animals of this state and shall determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of dangerous, contagious, and infectious diseases among the domestic animals of this state. The board may make rules ~~and regulations~~ for the conduct of its business and to carry into effect the purposes of this chapter and other duties prescribed in this title. The rules of the state livestock sanitary board must be adopted in accordance with chapter 28-32.

* SECTION 3. AMENDMENT. Section 36-01-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-13. Diseased animal to be reported to board. Any person who discovers, suspects, or has reason to believe that any domestic animal belonging to ~~him or in his charge~~, that person or belonging to any other person, is affected by any contagious disease, shall report such knowledge, suspicion, or belief to:

1. The state livestock sanitary board or ~~to a~~ any member or representative thereof of the board; or
2. ~~The clerk of the township in which such animal is present, or to a supervisor of such township if the clerk cannot be found. The state veterinarian or any other agent or representative of the state livestock sanitary board; or~~
3. Any law enforcement officer of the county or city in which the animal is present. If a report is made to an a law enforcement officer under this subsection, such the officer shall report the facts immediately to the state livestock sanitary board, the state veterinarian, or another agent or representative of the state livestock sanitary board and his failure to do so constitutes a violation of the provisions of this chapter.

* SECTION 4. AMENDMENT. Section 36-01-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-14. Protest against killing of diseased animal - Examination of animal by experts - Appointment of experts. Whenever a domestic animal has been ~~adjudged~~ determined to be affected with a contagious or infectious disease and has been ordered killed by the state livestock sanitary board ~~or by an accredited agent thereof, the state veterinarian, or an agent or representative of the state livestock sanitary board, the owner or keeper of said the animal must be notified of the order. Notice may be accomplished by sending, by registered or certified mail, a copy of the order to the owner or keeper of the animal, or by having an agent or representative of the board, or a law enforcement officer, serve a copy of the order upon the owner or keeper of the animal. Within twenty-four hours after receiving such notice of the order, such the owner or keeper may file a protest against the killing of such the animal with said the board or with its accredited agent the person who has ordered the animal killed. Such The protest must state under oath, that to the best of the knowledge and belief of the person making the same such protest, the animal is not infected with any contagious or infectious disease. An examination of the animal involved then must be made by three experts, one of whom must be appointed by the board, one by the person making the protest, and the third by the two thus appointed. All such~~

the experts must be persons learned in veterinary medicine and surgery and graduates of the veterinary course of a recognized college or university.

* SECTION 5. AMENDMENT. Section 36-01-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-16. Disposal of carcass of diseased animal. The owner or keeper of any animal killed by order of the state livestock sanitary board, the state veterinarian, or by an agent or representative of the state livestock sanitary board, shall dispose of the carcass of the animal in the manner prescribed by the board or the state veterinarian. If the owner or keeper of an animal killed ~~as aforesaid~~ pursuant to an order is unknown, the carcass must be disposed of at the expense of the county in which the carcass is located.

* SECTION 6. AMENDMENT. Section 36-01-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-17. ~~Board, members, and agents to have same powers as county judge in Oaths and examinations.~~ The state livestock sanitary board, and any member of the board, the state veterinarian, or any ~~member or duly authorized agent thereof~~ authorized agent or representative of the board, may examine or cause to be examined under oath all persons believed to possess knowledge of material facts concerning the existence or dissemination, or the danger of dissemination, of disease among domestic animals. For this purpose, the board, members of the board, the state veterinarian, and any ~~member or authorized agent thereof~~ authorized agent or representative of the board, must shall have ~~all the powers vested by this code in county judges~~ the power to take depositions, to compel witnesses to attend and testify, and to administer oaths. Such witnesses shall receive the same fees for attendance and travel as witnesses before the district courts, and ~~said~~ the fees must be paid by the board from moneys appropriated to it.

* SECTION 7. AMENDMENT. Section 36-01-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-18. Inspection of livestock in transit —~~Execution of orders of board by peace officers - Powers of officers - Penalty.~~ ~~Authorized~~ The state veterinarian and authorized agents and representatives of the state livestock sanitary board, for purposes of inspecting livestock in transit for health or ownership identification, may stop vehicles transporting livestock on public highways of this state. When signaled by ~~such representative~~ the state veterinarian or an authorized agent or representative of the board to stop, the operator of any vehicle shall stop the vehicle, show any health or identification forms which are required to be carried in transportation of livestock, and permit the inspector to make an inspection of the livestock being transported if deemed by the inspector to be necessary. Failure to stop when so directed constitutes is a class A misdemeanor. ~~Any vehicle used by an inspector for purposes of inspecting livestock in transit must be clearly identified in letters not smaller than three inches {7-62 centimeters}.~~ The inspector is authorized to use a stop signal.

The state livestock sanitary board, the state veterinarian, or any authorized agent or representative of the board, may call any sheriff or deputy sheriff, police officer, or highway patrol officer, to execute its orders, and those officers must obey the orders of the board. Any peace law enforcement officer may arrest and take before any county judge of the county

any person found violating any of the provisions of this chapter. The peace law enforcement officer shall immediately notify the state's attorney immediately of the county of the arrest, and the state's attorney shall prosecute the person so offending found violating any provision of this chapter.

* SECTION 8. AMENDMENT. Section 36-01-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-22. Permit for feeding garbage to swine. No person may feed garbage to swine without first securing a permit from the livestock sanitary board. Such permits must be renewed on the first of July of each year. As used in this section "garbage" means animal and vegetable waste matter resulting from the handling, preparation, cooking, and consumption of foods, including animal carcasses or parts of animal carcasses, except that dairy products from a licensed creamery or dairy is not considered garbage for the purposes of this section. This section does not apply to any person who feeds garbage from his own household.

* SECTION 9. AMENDMENT. Section 36-01-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-28. Penalty. Any person who violates any of the provisions of this chapter for which a specific penalty is not provided, or who knowingly violates any rule or regulation duly established adopted by the livestock sanitary board, is guilty of a class B misdemeanor.

* SECTION 10. AMENDMENT. Section 36-01-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-29. Quarantined Monitored livestock feedlots - Regulations Rules - Licensure License. The livestock sanitary board is authorized to promulgate regulations may adopt rules for the establishment and maintenance by any person of a quarantined monitored livestock feedlot. Any person may, on compliance with such regulations the rules, obtain a license for said the feedlot upon filing an application with the state livestock sanitary board and upon the payment of an annual fee of fifty dollars to the state livestock sanitary board. Such The fee must be deposited with the state treasurer in the general fund out of which, upon legislative appropriation, the veterinarian inspector's fees and cost of administration, must be paid. When so licensed and upon in compliance with the regulations rules for the maintenance of the quarantined monitored livestock feedlot, such the licensee is authorized to confine and feed, in the feedlot, without vaccination or tests for brucellosis and such other diseases as the livestock sanitary board may specify, cattle to be sold only for slaughter or at public market or to another quarantined monitored feedlot.

* SECTION 11. AMENDMENT. Section 36-01-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-01-30. Feedlot registration - Rules and regulations - Penalty. No person may operate a registered livestock feedlot without obtaining from the livestock sanitary board a registration number. The livestock sanitary board is hereby authorized to set adopt rules within the limitations of this section for the operation of feedlots registered for the enforcement of brand inspection regulations rules. Applications for registration must be made upon such forms as may be prescribed by the board and must be accompanied by

a fee equal to the fee charged for brand recording. All fees and any inspection fees established by the board must be remitted regularly to the North Dakota stockmen's association. The board may promulgate, in accordance with chapter 28-32 such, adopt rules and regulations consistent with law as may be required for the purpose of assuring that brand laws are complied with and, brand inspection certificates are available, and proper records are maintained. Violation of any provision of law or of any rule or regulation of the board promulgated pursuant to this section subjects the operator to revocation or suspension of registration issued hereunder, and in addition any person violating any provision of this section or rule or regulation of the board promulgated hereunder is guilty of a class B misdemeanor. A registration issued under this section may be revoked or suspended for violation of any provision of law or of any rule adopted by the board under this section. In addition, any person violating any provision of this section or any rule adopted by the board under this section is guilty of a class B misdemeanor. The provisions of this section may not be construed as prohibiting the operation of nonregistered feedlots.

* SECTION 12. AMENDMENT. Section 36-07-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-01. License required to operate rendering plant. No person, firm, or corporation may operate a rendering plant or other establishment using the carcasses of domestic or wild animals, which are not intended for human consumption, for processing without first obtaining a license to do so from the state livestock sanitary board. Such The license may be issued only upon a written application filed with the board in accordance with the provisions of this chapter and such rules and regulations as may be established adopted by the board.

* SECTION 13. AMENDMENT. Section 36-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-02. Inspection of establishment of applicant by state livestock sanitary board. Upon the receipt of an application for a license to operate a rendering plant or other establishment using the carcasses of domestic or wild animals, which are not intended for human consumption, for processing, the state livestock sanitary board shall cause an inspection to be made of the establishment for which a license is requested, including its equipment and vehicles and the manner in which its business is conducted, with reference and due regard to the danger of animal disease transmission and dissemination.

* SECTION 14. AMENDMENT. Section 36-07-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-03. Granting of license - Fee - Term. If the inspection fails to reveal any danger of animal disease transmission, the state livestock sanitary board shall issue the license applied for upon payment of a fee of fifty dollars. Such The license remains is valid for a period of one year from the date of issuance unless it is revoked for cause by said the board before such time expiration.

SECTION 15. AMENDMENT. Section 36-07-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-08. Carcasses to be removed from vehicle only at rendering plant
Removal of carcasses from vehicle - Prohibition. No carcass collected at any farm in this state may be removed from the vehicle except at ~~the~~ a rendering plant or other establishment using the carcasses of domestic or wild animals, which are not intended for human consumption, for processing, for final disposal.

* SECTION 16. AMENDMENT. Section 36-07-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-09. Operator of vehicle for rendering plant to have certificate. Any person operating a vehicle for ~~a licensed rendering~~ an establishment licensed under this chapter shall have an authorized certificate from the ~~rendering~~ establishment which has been approved by the state livestock sanitary board.

* SECTION 17. AMENDMENT. Section 36-07-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-10. Inspection of rendering plant authorized. The operator of any ~~rendering~~ establishment licensed under this chapter shall permit an official authorized by the state livestock sanitary board or any health officer to inspect ~~his~~ the licensed establishment at any time.

* SECTION 18. AMENDMENT. Section 36-07-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-11. Rendering done by packing plants operating under federal inspection - Exception. All rendering done by a packing plant operating under federal inspection in a building adjacent to or on the same premises as ~~said~~ the packing plant is exempt from the provisions of this chapter, except that the transportation by ~~such~~ the packing plant or ~~a rendering plant~~ any establishment licensed under this chapter of carcasses and other animal substances on any public highway or street is subject to the sanitary requirements of this chapter and the rules ~~and regulations of adopted by~~ the state livestock sanitary board ~~made pursuant thereto~~.

SECTION 19. AMENDMENT. Section 36-07-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-07-13. Restrictions on rebuilding and locating rendering plants. No ~~rendering plant or~~ establishment licensed under this chapter may be constructed within three miles [4.83 kilometers] of the limits of any municipality nor within one mile [1.61 kilometers] of any farmstead unless the owner of ~~such~~ the farmstead gives his written consent. No such ~~plant~~ establishment which was in existence and in operation on or after March 17, 1941, may be rebuilt if it is located within three miles [4.83 kilometers] of the limits of any municipality.

SECTION 20. AMENDMENT. Section 36-14-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-04. Horses, mules, and asses imported into state to have certificate of ~~health~~ veterinary inspection. Each horse, mule, and ass brought into this state must be accompanied by a ~~health~~ certificate of veterinary inspection certifying that such animal has been examined within

thirty days previous to the shipment and found to be free from all contagious and infectious diseases.

* SECTION 21. AMENDMENT. Section 36-14-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-05. Cattle brought into state - Certificate of health veterinary inspection required. All cattle brought into this state ~~for dairy, breeding, and feeding purposes~~ must be accompanied by a certificate of health veterinary inspection certifying that ~~such~~ the animals are free from symptoms of contagious, infectious, or communicable disease, except that no health certificate of veterinary inspection is required for those cattle originating directly from a producer's premises and not diverted en route, if ~~such~~ the cattle are delivered directly to a licensed auction market or other premises approved by the livestock sanitary board.

* SECTION 22. AMENDMENT. Section 36-14-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-06. Certificate of health veterinary inspection required of sheep imported into state - Contents. All sheep brought into this state must be accompanied by a certificate of health veterinary inspection certifying that ~~such~~ the animals are free from symptoms of contagious, infectious, or communicable diseases, except that no health certificate of veterinary inspection is required for those sheep originating directly from a producer's premises and not diverted en route, if ~~such~~ the sheep are delivered directly to a licensed auction market or other premises approved by the livestock sanitary board.

* SECTION 23. AMENDMENT. Section 36-14-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-07. Swine brought into state to have certificate of health veterinary inspection - Contents. All swine brought into this state must be accompanied by a certificate of health veterinary inspection certifying that ~~such~~ the animals are free from symptoms of contagious, infectious, or communicable diseases, except that no health certificate of veterinary inspection is required for those swine originating directly from a producer's premises and not diverted en route, if ~~such~~ the swine are delivered directly to a licensed auction market or other premises approved by the livestock sanitary board.

* SECTION 24. AMENDMENT. Section 36-14-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-10. Shipments of cattle, swine, and sheep for immediate slaughter. Shipments into this state of cattle, swine, and sheep for immediate slaughter shall be permitted without a health certificate of veterinary inspection only if ~~such~~ the livestock are not diverted en route, and are delivered directly to a slaughtering establishment approved by the livestock sanitary board.

* SECTION 25. AMENDMENT. Section 36-14-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-11. Certificates of health veterinary inspection issued by whom - Tests made by whom - Regulations governing. All certificates of

health veterinary inspection required under the provisions of this chapter must be issued, and all tests must be made, by a federal or state veterinarian or a deputy state veterinarian, or by a graduate veterinarian whose inspections and tests are endorsed by the officer in charge of the livestock sanitary work in the state where the inspection or test is made, and subject to the regulations of the state livestock sanitary board. All such tests must conform to the standard tests of the United States department of agriculture. All serums used must be manufactured or approved by the United States department of agriculture.

* SECTION 26. AMENDMENT. Section 36-14-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-12. Requirements governing the issuance of certificates. The certificate certifying to a test made under the provisions of this chapter must be made on official federal or state blanks and must accompany the shipment to its destination. When an original certificate is made, three two copies thereof of the certificate must be mailed immediately to the state livestock sanitary board. The failure of a veterinarian to mail such two copies of each certificate relating to livestock to be shipped into this state to the board is sufficient cause to refuse acceptance of any more certificates from such that person. The owner or owners of the livestock shall have a copy of the certificate to show on the demand of any federal or state official.

* SECTION 27. AMENDMENT. Section 36-14-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-13. Issuance of health certificate of veterinary inspection by unauthorized person - Penalty. Any person who issues a health certificate of veterinary inspection for livestock within this state without being authorized so to do by the state livestock sanitary board or by the United States department of agriculture is guilty of a class B misdemeanor.

SECTION 28. AMENDMENT. Section 36-14-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-14-20. Duty of overseer of highways or coroner when carcass of dead animal is found - Fees - Recovery of expense. If the owner or person in charge of a dead animal fails to comply with the provisions of section 36-14-19, the overseer of highways, or the county coroner in a district which has no overseer, shall cause such section to be complied with comply with the provisions of section 36-14-19 for the owner or person. If burial of the animal is permitted, such the burial may be made upon the premises of the owner or person in charge thereof of the animal at any place more than one thousand feet [304.8 meters] from any dwelling house or barn. The board of county commissioners shall allow such sums in payment a sum for such disposal services as it deems to be reasonable, and the same sum must be paid as other moneys are paid for services rendered to the county. The owner of the animal is liable to the county for any amount paid out for such disposal services, and if. If the owner does not pay such that amount within thirty days after written demand therefor for payment is made upon him by the county auditor, the same sum may be recovered in a civil action, and the judgment must include the costs of the suit and a reasonable attorney's fee, not exceeding twenty five dollars, to be fixed by the court. No property except absolute exemptions is exempt from sale for the payment of any such judgment. Any

attorney's fee allowed by the court must be paid to the county if the action is brought by the state's attorney.

SECTION 29. AMENDMENT. Section 36-15-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-15-06. Fees of appraisers - How paid. Each member of the board of appraisers who is not ~~connected with an agent of the board~~ is entitled to ~~one dollar per day~~ reasonable compensation for ~~his~~ services rendered. ~~Such compensation~~ Compensation for all board of appraiser members must be the same and must be paid out of the fund created for the purpose of carrying out the provisions of this chapter, upon presentation of vouchers to the state auditor duly approved by the board.

SECTION 30. AMENDMENT. Section 36-15-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-15-14. Cattle not to be permitted to enter area circumscribed by board for testing purposes. The board may enforce the tuberculin testing or the brucellosis testing of all cattle in a circumscribed area as established by the board in accordance with the provisions of this chapter providing for the eradication of bovine tuberculosis or brucellosis, as the case may be, and the rules of the board relating to eradication. Whenever a circumscribed area is established by the board as an area in which all cattle are to be tuberculin tested or brucellosis tested, as the case may be, and ~~such the~~ test is undertaken under the direction of the board, no other cattle may be permitted to enter ~~such~~ the area except under a special permit and restrictions provided by the board unless:

1. If the area is to be tuberculin tested, ~~such the~~ cattle have been tuberculin tested under the direction of ~~an agent of the board~~ or are accompanied by a proper tuberculin ~~tested health test~~ certificate of veterinary inspection.
2. If the area is to be brucellosis tested, ~~such the~~ cattle have been brucellosis tested under the direction of ~~an agent of the board~~ or are accompanied by a proper brucellosis test ~~health~~ certificate of veterinary inspection.

SECTION 31. AMENDMENT. Section 36-15-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-15-22. Enforcement orders - Administrative hearing - Penalty.

1. The board may order cattle brought into the state which are not in compliance with the provisions of this chapter to be returned to their state of origin, or in the alternative, the board may order the cattle to be slaughtered.
2. If, after a hearing, the board finds that a person has brought ~~or~~ kept, or received cattle in this state and the cattle are not in compliance with the provisions of this chapter, a civil penalty not to exceed two thousand five hundred dollars may be assessed against that person.

* ** SECTION 32. REPEAL. Sections 36-01-09, 36-01-21, 36-01-23, 36-01-24, 36-01-25, 36-01-26, 36-01-27, 36-15-13, 36-15-15, 36-15-16, 36-15-17, and 36-15-18 of the North Dakota Century Code are hereby repealed.

Approved March 9, 1989
Filed March 9, 1989

* NOTE: Twenty-nine North Dakota Century Code sections amended or repealed by House Bill No. 1121 were also amended by Senate Bill No. 2257, chapter 80.

** NOTE: Section 36-01-21 was also amended by section 38 of Senate Bill No. 2056, chapter 69.

CHAPTER 426

HOUSE BILL NO. 1180
(Tokach)

NSF CHECKS FOR LIVESTOCK NOTICE

AN ACT to create and enact a new section to chapter 36-04, a new subsection to section 36-04-10, and a new section to chapter 36-05 of the North Dakota Century Code, relating to notification by livestock dealers and livestock auction markets of nonsufficient funds checks to the commissioner of agriculture.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 36-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Notice - Nonsufficient funds checks. A dealer that receives a check for the sale of horses, mules, cattle, hogs, goats, sheep, or wool which is returned unpaid with a notation that the payment has been refused because of nonsufficient funds shall notify the commissioner within forty-eight hours after receipt of the check.

SECTION 2. A new subsection to section 36-04-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

The applicant has failed to notify the commissioner of the receipt of a nonsufficient funds check as required by section 1 of this Act.

SECTION 3. A new section to chapter 36-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Notice - Nonsufficient funds checks. A livestock auction market that receives a check for the sale of livestock which is returned unpaid with a notation that the payment has been refused because of nonsufficient funds shall notify the commissioner within forty-eight hours after receipt of the check.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 427

SENATE BILL NO. 2239
(Committee on Agriculture)
(At the request of the Office of Management and Budget)

LIVESTOCK DEALERS, AUCTIONS, AND BRAND FEES

AN ACT to amend and reenact subsection 1 of section 36-04-07, sections 36-05-03 and 36-09-13 of the North Dakota Century Code, relating to livestock dealers', auctions', and brand recording fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 36-04-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. For a livestock dealer's license, ~~twenty-five~~ fifty dollars.

* SECTION 2. AMENDMENT. Section 36-05-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-05-03. License requirements - Application - Fee - Commission schedule - Facilities. No person, partnership, firm, or corporation may establish or operate a livestock auction market within this state without first procuring a license to do so from the commissioner. The commissioner may not approve any application without written permission from the executive officer of the livestock sanitary board. An applicant for such license shall do all of the following:

1. Make a written application therefor in the form prescribed by the commissioner.
2. File such evidence as the livestock sanitary board or the commissioner may require showing that the person is financially responsible to operate such an auction market and that the person will own or control adequate facilities for the care, sorting, feeding, loading and unloading, and shipment of livestock.
3. Pay to the commissioner a license fee of ~~one~~ two hundred dollars.
4. File with the commissioner a schedule of the fees and commissions which will be charged to owners, sellers, or their agents. The schedule must be posted conspicuously at the auction market. This schedule may not be altered except upon notification to the commissioner and reposting of the changed schedule.
5. State the place where applicant proposes to operate a livestock auction market.

* NOTE: Section 36-05-03 was also amended by section 32 of Senate Bill No. 2257, chapter 80.

6. Make a complete and detailed description of the property and facilities proposed to be used in connection with such livestock auction market.
7. Make a showing of public convenience and necessity to the satisfaction of the commissioner.

SECTION 3. AMENDMENT. Section 36-09-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-09-13. Recording and rerecording of brands - Fee. The rerecording of abandoned livestock brands or marks, and the recording of new brands and marks, must conform in all respects to this chapter. Each application for recording and rerecording must be accompanied by a fee of ~~ten~~ fifteen dollars for each place or position upon each type of livestock where the brand or mark is to be placed.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 428

SENATE BILL NO. 2085
(J. Meyer)

SATELLITE VIDEO LIVESTOCK AUCTIONS

AN ACT relating to satellite video livestock auction markets.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Commissioner" means the commissioner of agriculture.
2. "Livestock" means horses, mules, cattle, swine, sheep, and goats.
3. "Representative" means a dealer licensed under chapter 36-04 who is a resident of this state or a livestock auction market licensed under chapter 36-05.
4. "Satellite video livestock auction market" means a place or establishment conducted or operated for compensation or profit as a public market where livestock located in this state is sold or offered for sale at a facility within or outside the state through the use of a satellite video at a public auction.

SECTION 2. Satellite video livestock auction market - Authority to transact business. No satellite video livestock auction market may transact business in this state unless the market transacts business through a representative licensed under this Act.

SECTION 3. Application for license - Contents.

1. Before entering into business with a satellite video livestock auction market and annually, on or before July first, each representative shall file an application for a license to transact business with a satellite video livestock auction market with the commissioner on a form prescribed by the commissioner. The application must show:
 - a. The nature of the business for which a license is desired;
 - b. The name of the representative applying for the license;
 - c. The name and address of the satellite video livestock auction market with which the applicant proposes to transact business; and
 - d. Other information the commissioner may require.

2. The application for a license or for a renewal of a license must be accompanied by:
 - a. A license fee of one hundred dollars;
 - b. Evidence the commissioner may require showing that the satellite video livestock auction market the representative proposes to do business with is financially responsible and bonded to transact such business;
 - c. A schedule of the fees and commissions that will be charged to owners, sellers, or their agents;
 - d. A copy of the contract between the representative and the satellite video livestock auction market with which the representative proposes to transact business. The contract must contain a provision authorizing the commissioner or the commissioner's designee to have access to the books; papers; accounts; financial records held by financial institutions, accountants, or other sources; and other documents relating to the activities of the satellite video livestock auction market and requiring the satellite video livestock auction market to make such documents reasonably available upon the request of the commissioner or the commissioner's designee. The contract must also provide that the satellite video livestock auction market and its representative are jointly and severally liable, with the right of contribution, for all business transacted within this state by the representative on behalf of the satellite video livestock auction market. If the contract between the representative and the satellite video livestock auction market is terminated, rescinded, breached, or otherwise materially altered, the representative and the satellite video livestock auction market shall immediately notify the commissioner. Failure to notify the commissioner of termination, rescission, breach, or material alteration of the contract between the representative and the satellite video livestock auction market is deemed to be a failure to keep and maintain suitable records with the department and is deemed to be a false entry or statement of fact in an application filed with the department.

SECTION 4. Use of fees - Grounds for refusal or revocation of license - Review by court. All fees collected by the commissioner under this Act must be deposited in the general fund of the state treasury. A license may be refused or revoked for any reason specified in subdivision c or d of subsection 2 of section 36-04-04 or section 36-04-10, or if the contract required by this Act between the representative and the satellite video livestock auction market is extinguished, rescinded, or canceled, or is breached by either party. The action of the commissioner in denying an application for a license or revoking or suspending a license may be appealed as provided in section 36-05-13.1.

SECTION 5. Inspection of livestock. Before any livestock sold pursuant to this Act is delivered, whether interstate or intrastate, the livestock must be inspected for health by a veterinarian licensed in this state and approved by the livestock sanitary board and, in the case of cattle, for brands by a trained brand inspector, acting under rules adopted

by the North Dakota stockmen's association and the livestock sanitary board. The inspection must take place at the time of the initial delivery of the livestock. If livestock is destined to be shipped interstate, the authorized veterinarian shall furnish to each purchaser a certificate showing that the inspection has been made and treatment administered in accordance with the requirements of the state of destination. The services and duties of the veterinary inspector are under the supervision of the state livestock sanitary board. Fees for the veterinary inspection must be an amount agreed upon by the representative and the veterinarian. All fees for veterinary inspection, treatment, and services must be collected by the representative and paid to the inspector.

SECTION 6. Method of payment. Payment to the seller for livestock sold through a satellite video livestock auction market must be made in United States currency, with an instrument payable on demand drawn on a financial institution chartered and regulated by a state or the federal government, or by wire transfer or other electronic form of payment from a financial institution chartered and regulated by a state or the federal government.

SECTION 7. Sale of livestock by weight - Scales to be inspected. Notwithstanding section 36-21-15, all livestock sold by weight through a satellite video livestock auction market must be sold based on the weight of the livestock on the day of delivery. All livestock sold by weight must be weighed on scales that have been tested and inspected by the department of weights and measures in the manner provided by law.

Approved April 11, 1989

Filed April 12, 1989

CHAPTER 429

HOUSE BILL NO. 1182

(Committee on Agriculture)

(At the request of the Commissioner of Agriculture)

LIVESTOCK BRAND RECORDING

AN ACT to create and enact section 36-09-02.1 of the North Dakota Century Code, relating to standards for recording livestock brands or marks; to amend and reenact sections 36-09-02, 36-09-09, and 36-09-10 of the North Dakota Century Code, relating to applications for the exclusive use of brands or marks and the rerecording of previously recorded brands or marks; and to repeal section 36-09-05 of the North Dakota Century Code, relating to recording of similar brands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-09-02. Application for exclusive use of brand or mark —~~Recording of brands and marks.~~ Any person desiring the exclusive use of any mark or brand shall file with the commissioner of agriculture an application:

1. Setting forth a description of the mark or brand of which he desires the exclusive use and a facsimile thereof;
2. Stating the kind or kinds of livestock upon which the mark or brand is to be used; and
3. Indicating clearly the place or position upon each kind of livestock where such brand is to be placed, except that the hips of any cattle may not be used for registered numerical brands. Nonregistered numerical brands may be located upon the hips of cattle for individual identification. Registered brands other than numerical brands may also be located on the hips of cattle. Numerical brand means a brand consisting entirely of upright number or numbers, and does not include brands consisting of lazy numbers, or combinations of letters, or characters and numbers. The provisions of this chapter do not apply to any numerical brand recorded prior to July 1, 1957.

The commissioner shall record the mark or brand described in the application if the same has not been recorded previously in favor of another person; and shall show in his record the place or position such mark or brand will occupy on each kind of livestock. The mark or brand for which an applicant applies must be given to him whenever it is possible to do so without conflicting or interfering with any previously recorded mark or brand; and if the mark or brand applied for has been recorded previously, the commissioner shall notify the applicant of this fact and permit such applicant to apply for another and different mark or brand.

SECTION 2. Section 36-09-02.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

36-09-02.1. Standards for recording brands or marks. The commissioner shall record the brand or mark described in the application except that the commissioner shall refuse to record any brand or mark:

1. That has been previously recorded in favor of another person or one that is deceptively similar to any previously recorded livestock brand or mark. The same or similar livestock brand or mark which is to be placed on a different part of the animal from that described in the previous record may be recorded.
2. That contains less than two characters or one that contains any of the following characters:
 - a. The letters "g" or "q" or letters that are not in the gothic style.
 - b. The Arabic numerals "o" or "l" or any non-Arabic numerals.
 - c. Any symbols other than permissible symbols. Permissible symbols are limited to the following: diamond, half-diamond, arrow, mill iron, cross, heart, box, triangle, quarter circle, bar, or star.
3. That involves any letters, numerals, or symbols within another letter, numeral, or symbol.
4. That is illegible when placed on the livestock.
5. That indicates placement upon each kind of livestock in other than a permissible location. Permissible locations for cattle are the left and right shoulder, the left and right rib, and the left and right hip. Permissible locations for horses are: mules are left and right jaw, left and right shoulder, and left and right hip. Permissible locations for buffalo are left and right rib, and left and right hip. The permissible locations for other types of livestock must be established by the commissioner as necessary. The determination of permissible locations under this section may not be considered as a rule under chapter 28-32.

Notwithstanding any provisions of this section to the contrary, the commissioner shall accept for rerecording under section 36-09-09 any previously recorded livestock brand or mark.

SECTION 3. AMENDMENT. Section 36-09-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-09-09. Cancellation of brands - Rerecording - Limitation on brands. On the first day of January 1966, each and every livestock brand or mark must be canceled and no person, copartnership, company, firm, or corporation may use or have any right, title, or interest in or to any livestock brand or mark previously recorded in this state. If a person, copartnership, company, firm, or corporation should desire to continue ownership thereof, the brand or mark must be rerecorded on or before January first, and each ten years thereafter. **No single figure or single letter may be used as a livestock**

~~brand; except that owners of single letter or figure brands shall have the privilege of using such single letter or figure brand combined with some other character, letter, or figure. Rerecording is not required from an owner who has registered for a new brand within six months prior to the date provided for the rerecording of brands thereafter.~~

SECTION 4. AMENDMENT. Section 36-09-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-09-10. Brands to be rerecorded every ten years. Failure to rerecord any previously recorded livestock brand or mark on or before the time specified, in accordance with the provisions of this chapter, is deemed an absolute abandonment to the state of North Dakota of such previously recorded livestock brand or mark. Thereafter the commissioner of agriculture shall accept any regular application for the issuance to anyone of such abandoned livestock brand or mark, provided the abandoned livestock brand or mark complies with the standards of section 36-09-02.1. The commissioner shall issue ~~his~~ a certificate for the use of such abandoned brand or mark within this state, except that such brand or mark may not be issued if it consists of a single figure or single letter.

SECTION 5. REPEAL. Section 36-09-05 of the North Dakota Century Code is hereby repealed.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 430

HOUSE BILL NO. 1114
(Committee on Agriculture)
(At the request of the State Auditor)

STOCKMEN'S ASSOCIATION AUDITS

AN ACT to amend and reenact section 36-22-09 of the North Dakota Century Code, relating to examination of records and accounts of the stockmen's association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-22-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

36-22-09. State auditor to examine records and accounts of the association - Report. It is the duty of the state auditor to examine the records and accounts of said North Dakota stockmen's association and to report thereon to the governor. Audit of stockmen's association. It is the duty of the board of directors of the North Dakota stockmen's association to provide for an audit at least once every two years by a certified public accountant or licensed public accountant. Two copies of each audit report must be submitted to the state auditor's office.

Approved March 9, 1989
Filed March 9, 1989

MILITARY

CHAPTER 431

SENATE BILL NO. 2381
(Senators Lips, Dotzenrod)
(Representatives Ulmer, Rydell)

VETERANS' CEMETERY

AN ACT to create and enact a new section to chapter 37-03 of the North Dakota Century Code, relating to the establishment of a state veterans' cemetery; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

North Dakota veterans' cemetery - Administration. The adjutant general shall establish and operate the North Dakota veterans' cemetery, which the adjutant general shall locate within or adjacent to Fort Abraham Lincoln state park. The adjutant general may accept and utilize private and federal funds to establish and operate the veterans' cemetery. The adjutant general, with the approval of the governor, may enter into an agreement with the director of the state parks and recreation department for the maintenance of the cemetery. The adjutant general shall provide lots in the state veterans' cemetery for the interment of deceased members of the national guard and veterans, and their spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. The adjutant general may adopt, amend, or rescind any rules under chapter 28-32 as deemed necessary to implement and administer this section.

SECTION 2. APPROPRIATION. There is hereby appropriated any funds received by the adjutant general from federal and private sources for the purpose of constructing and operating the North Dakota veterans' cemetery at or adjacent to Fort Abraham Lincoln state park for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 432

SENATE BILL NO. 2349

(Nalewaja, Heinrich, J. Meyer, Stenehjem, Peterson)

VETERANS' AID FUND

AN ACT to amend and reenact sections 37-14-03.3, 37-14-04, 37-14-05, 37-14-06, and 37-14-07 of the North Dakota Century Code, relating to the veterans' aid fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-14-03.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-03.3. Revolving fund. The sum of seven hundred thousand dollars is a permanent revolving fund of the veterans' aid fund and may not revert to the general fund and must be used solely for the purpose of making loans to any veteran as defined by section 37-01-40; ~~however, nothing in this and to a surviving spouse of a veteran if the spouse has not remarried. This section prohibits does not prohibit~~ the department of veterans' affairs, in its discretion, from using any interest the fund accrues or has already earned or accrued ~~for the purposes of collecting to collect~~ loans if in the opinion of the department ~~the veteran~~ a person has the financial means to repay, and ~~he~~ that person deliberately refuses to do so.

SECTION 2. AMENDMENT. Section 37-14-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-04. Veterans' aid fund - Purpose. The purpose of the veterans' aid fund is to make loans or advancements to any veteran as defined by section 37-01-40 ~~and to a surviving spouse of a veteran if the spouse has not remarried. A veteran qualified applicant may be permitted to make more than one loan providing the veteran applicant has satisfied payment requirements of a previous loan.~~

SECTION 3. AMENDMENT. Section 37-14-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-05. Application for aid. ~~Any such veteran~~ A qualified person may ~~make application apply~~ to the department of veterans' affairs in such form as it ~~may provide provides~~, either while ~~he or she~~ the applicant is waiting for relief or assistance from ~~such other another~~ agency, state or federal, ~~as may provide relief to him; or for further assistance for his~~ the applicant's education, or otherwise.

SECTION 4. AMENDMENT. Section 37-14-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-06. Department may provide aid. If the department of veterans' affairs is satisfied that an applicant is a veteran, as defined by section

37-01-40, or the surviving spouse of a veteran and has not remarried, and that the applicant is a citizen and resident of this state, the department may loan to the applicant, or a guardian of the applicant, a sum from the veterans' aid fund not to exceed ~~the sum of~~ two thousand dollars.

SECTION 5. AMENDMENT. Section 37-14-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-07. Repayment to be made to aid fund. Upon the granting of ~~such~~ an application and at the time of ~~such~~ disbursement, the applicant, or ~~his~~ the applicant's legally appointed guardian, ~~must be required to~~ shall execute an agreement with the department of veterans' affairs that within a specified period of ~~two~~ not to exceed four years from the date of the receipt of the last item of ~~such~~ the advancement ~~he~~, the applicant will repay to the state of ~~North Dakota~~ for the use of the veterans' aid fund the full amount of all advancements made to ~~him~~ the applicant with interest as provided in rules ~~and~~ regulations adopted ~~pursuant to~~ under section 37-14-10, but not to exceed ten percent annually. One-half of the interest must be waived if timely repayment is made to the fund. The department ~~has the authority to~~ may take necessary legal action to collect, compromise, or settle loans if in the opinion of the department the ~~veteran~~ person has the financial means to repay, and ~~he~~ the person deliberately refuses to do so. The department ~~shall also have the authority to~~ may release from financial liability any ~~veteran~~ whom person it determines is financially unable to repay the loan through no fault of the ~~veteran's~~ person.

Approved March 28, 1989

Filed March 28, 1989

CHAPTER 433

SENATE BILL NO. 2137

(Committee on Human Services and Veterans Affairs)

(At the request of the Administrative Committee on Veterans' Affairs)

VETERANS' HOME OBJECTIVE AND CONTRIBUTIONS

AN ACT to amend and reenact section 37-15-02 and subsection 3 of section 37-15-14.1 of the North Dakota Century Code, relating to the object of the veterans' home and membership contributions for residents of the veterans' home.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-15-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-15-02. Object of veterans' home. The object of the veterans' home is to provide domiciliary and long-term care as defined under chapter 23-16 for:

1. All veterans as defined in section 37-01-40 and all honorably discharged soldiers of the North Dakota national guard who heretofore or hereafter may become permanently disabled from any cause while in line and discharge of duty.
2. The spouses and surviving spouses of those mentioned in subsection 1 if they meet the requirements for admission under section 37-15-10.

SECTION 2. AMENDMENT. Subsection 3 of section 37-15-14.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. All moneys received as a result of charging the membership contribution authorized by subsection 1 must be deposited in a special fund in the state treasury to be known as the "veterans' home improvement fund". The fund must be invested by the state investment board in the manner provided in chapter 21-10, and all income received, less amounts deducted pursuant to section 21-10-10, must be deposited in, or reinvested for the benefit of, the veterans' home improvement fund. Moneys in the veterans' home improvement fund must, subject to and following legislative appropriations, be expended only for expansion of present facilities of the home, for development of new facilities, for enrichment of living conditions, or for additional care for members of the home, as such expansion, development, enrichment, or additional care is deemed necessary by the administrative committee. ~~All moneys expended from the veterans' home improvement fund must be paid out on vouchers prepared by the secretary of the administrative committee on veterans' affairs.~~ The office of management and budget shall prepare the warrant-checks.

Approved March 28, 1989
Filed March 28, 1989

MINING AND GAS AND OIL PRODUCTION

CHAPTER 434

HOUSE BILL NO. 1137
(Committee on State and Federal Government)
(At the request of the Industrial Commission)

INDUSTRIAL COMMISSION PUBLIC LANDS JURISDICTION

AN ACT to amend and reenact subdivision d of subsection 1 of section 38-08-04 of the North Dakota Century Code, relating to the jurisdiction and authority of the industrial commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision d of subsection 1 of section 38-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the industrial commission prescribed to govern the production of oil and gas on ~~state~~ public and private lands within the state, except that if the commission requires a bond to be furnished, the person required to furnish the bond may elect to deposit cash or property under such terms and conditions as the industrial commission may prescribe.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 435

SENATE BILL NO. 2089
(Committee on Appropriations)
(At the request of the Industrial Commission)

ABANDONED OIL AND GAS WELLS

AN ACT to create and enact a new section to chapter 38-08 of the North Dakota Century Code, relating to the creation of a cash bond fund for the plugging of abandoned oil and gas wells and the reclamation of abandoned oil and gas well sites; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cash bond fund for plugging oil and gas wells and reclamation of oil and gas well sites - Appropriation.

1. There is hereby created a cash bond fund for the plugging of abandoned oil and gas wells and the reclamation of abandoned oil and gas well sites.
2. From all moneys held or controlled by the commission under subdivision d of subsection 1 of section 38-08-04, there is to be deposited in the cash bond fund such amount as determined by the commission but such amount may not exceed an amount equal to an annual return of two percent of the cash bond deposit.
3. Moneys in the cash bond fund are hereby appropriated to the commission to be used for the following purposes:
 - a. Defraying costs incurred in the plugging of abandoned oil and gas wells, and related activities.
 - b. Defraying costs incurred in the reclamation of abandoned oil and gas drilling and production sites, saltwater disposal pits, drilling fluid pits, and access roads, and related activities.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 436

HOUSE BILL NO. 1357
(Representative Aas)
(Senator D. Meyer)

EXCEPTION LOCATIONS OF OIL WELLS

AN ACT to amend and reenact subsection 3 of section 38-08-07 of the North Dakota Century Code, relating to the drilling of oil and gas wells at exception locations under orders establishing spacing units.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 38-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. An order establishing spacing units for a pool must specify the size and shape of each unit and the location of the permitted well thereon in accordance with a reasonably uniform spacing plan. Upon application, if the commission finds that a well drilled at the prescribed location would not produce in paying quantities, ~~or~~ that surface conditions would substantially add to the burden or hazard of drilling such well, or that the drilling of such well at a location other than the prescribed location is otherwise necessary either to protect correlative rights, to prevent waste, or to effect greater ultimate recovery of oil and gas, the commission is authorized to enter an order permitting the well to be drilled at a location other than that prescribed by such spacing order; however, the commission shall include in the order suitable provisions to prevent the production from the spacing unit of more than its just and equitable share of the oil and gas in the pool.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 437

SENATE BILL NO. 2230
(Committee on Natural Resources)
(At the request of the Industrial Commission)

OIL POLLUTION CRIMINAL PENALTY

AN ACT to amend and reenact section 38-08-16 of the North Dakota Century Code, relating to civil and criminal penalties for violation of gas and oil resource laws or rules; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-08-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-08-16. Civil ~~penalty~~ and criminal penalties.

1. Any person who violates any provision of this chapter, or any rule, regulation, or order of the commission is subject to a civil penalty to be imposed by the commission not to exceed twelve thousand five hundred dollars for each offense, and each day's violation is a separate offense, unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter. Any such civil penalty may be compromised by the commission. The penalties provided in this section, if not paid, are recoverable by suit filed by the attorney general in the name and on behalf of the commission, in the district court of the county in which the defendant resides, or in which any defendant resides, if there be more than one defendant, or in the district court of any county in which the violation occurred. The payment of the penalty may not operate to legalize any illegal oil, illegal gas, or illegal product involved in the violation for which the penalty is imposed, or to relieve a person on whom the penalty is imposed from liability to any other person for damages arising out of the violation.
2. Notwithstanding any of the other provisions of this section, a person who willfully violates any provision of this chapter, or any rule or order of the commission that pertains to the prevention or control of pollution or waste is guilty of a class C felony unless the penalty for the violation is otherwise specifically provided for and made exclusive in this chapter. The criminal penalty provided for in this subsection may only be imposed by a court of competent jurisdiction.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 438

HOUSE BILL NO. 1339
(Gerhardt, Oban, Goetz, Nelson, Haugen)

WELLHEAD WELDER CERTIFICATION

AN ACT to create and enact a new section to chapter 38-08 of the North Dakota Century Code, relating to the certification of welders by the oil and gas division of the industrial commission; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 38-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Regulation of welders by oil and gas division of industrial commission. No person may weld on an oil and gas wellhead unless that person is certified. A welder shall submit to the oil and gas division of the industrial commission for verification sufficient data to show satisfactory performance in a qualification test for American society of mechanical engineers section nine position six-G. The test of a welded specimen must be made by a certified testing laboratory. Before welding on an oil and gas wellhead, the welder shall furnish a statement to the person for whom the work is performed showing that the welder's certification has been verified by the commission. A person who violates this section is subject to a civil penalty to be imposed by the commission not to exceed five hundred dollars for each violation and shall pay all legal, administrative, and other costs incurred by the commission in investigating and litigating a violation. The commission may charge an annual fee of twenty-five dollars for verifying a certification. Annual fees collected under this section must be deposited into the state treasury in a special revolving fund. All moneys in the fund are hereby appropriated to the commission on a continuing basis to be used in administering this section.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 439

HOUSE BILL NO. 1082
(Committee on Natural Resources)
(At the request of the Public Service Commission)

SURFACE MINING BY SMALL OPERATORS

AN ACT to amend and reenact subsection 1 of section 38-14.1-37 of the North Dakota Century Code, relating to small operator exemption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 38-14.1-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The provisions of this chapter do not apply to any of the following activities:
 - a. ~~The extraction~~ Extraction of coal by a landowner for his own noncommercial use from land owned or leased by him.
 - b. ~~The extraction of coal for commercial purposes where the surface mining operations affect two acres (0.8 hectares) or less.~~
 - c. ~~The extraction~~ Extraction of coal as an incidental part of federal, state, or local government-financed highway or other construction under regulations established by the commission.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 440

SENATE BILL NO. 2207
(Committee on Appropriations)
(At the request of the Public Service Commission)

SURFACE MINING AND RECLAMATION FUND

AN ACT to amend and reenact section 38-14.1-39 of the North Dakota Century Code, relating to the surface mining and reclamation fund; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-14.1-39 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-14.1-39. Forfeitures - Deposit Surface mining and reclamation fund - Continuing appropriation. All performance Performance bond forfeitures collected under the provisions of this chapter must be deposited in the state treasury and credited to a special account to be designated as the surface mining and reclamation fund. This fund must be available All moneys deposited to the surface mining and reclamation fund are hereby appropriated to the commission and, subject to legislative appropriation, may be expended for the reclamation of for the purpose of reclaiming land affected by surface coal mining operations. The fund is not subject to section 54-44.1-11.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 441

SENATE BILL NO. 2078
(Senator Yockim)
(Representative Gerhardt)

MINERAL INTEREST TERMINATION

AN ACT to amend and reenact section 38-18.1-02, subsection 4 of section 38-18.1-03, subsections 2 and 3 of section 38-18.1-05, and subsection 4 of section 38-18.1-06 of the North Dakota Century Code, relating to the termination of mineral interests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 38-18.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

38-18.1-02. Statement of claims - Recording - Reversion. Any mineral interest is, if unused for a period of twenty years, immediately preceding the first publication of the notice required by section 38-18.1-06, deemed to be abandoned, unless a statement of claim is recorded in accordance with section 38-18.1-04. Title to the abandoned mineral interest vests in the owner or owners of the surface estate in the land in or under which the mineral interest is located on the date of abandonment.

SECTION 2. AMENDMENT. Subsection 4 of section 38-18.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The mineral interest on any tract is subject to a lease, mortgage, assignment, and or conveyance of the mineral interest recorded in the office of the register of deeds in the county in which the mineral interest is located.

SECTION 3. AMENDMENT. Subsections 2 and 3 of section 38-18.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. ~~Inadvertently~~ Has failed to preserve the mineral interest in question.
3. Within sixty days after first publication of the notice provided for in section 38-18.1-06, recorded a statement of claim.

SECTION 4. AMENDMENT. Subsection 4 of section 38-18.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A copy of the notice and an affidavit of service of the notice, if must be recorded in the office of the register of deeds of the county in which the mineral interest is located, is and constitutes prima facie evidence in any legal proceedings that such notice has been given.

Approved April 12, 1989
Filed April 13, 1989

MOTOR VEHICLES

CHAPTER 442

SENATE BILL NO. 2132
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

HOUSE CAR DEFINITION

AN ACT to amend and reenact subsection 25 of section 39-01-01 of the North Dakota Century Code, relating to the definition of house car.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 25 of section 39-01-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25. "House car" means a motor vehicle which has been reconstructed or manufactured primarily for private use as a temporary or recreational dwelling and having at least four of the following permanently installed systems:
- a. Cooking facilities.
 - b. Icebox or mechanical refrigerator.
 - c. Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.
 - d. Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.
 - e. Heating or air conditioning system or both, separate from the vehicle engine or the vehicle engine electrical system.
 - f. A 110-115 volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both or a liquefied petroleum system and supply.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 443

SENATE BILL NO. 2143
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

RECIPROCAL MOBILITY IMPAIRED PARKING

AN ACT to create and enact a new subsection to section 39-01-15 of the North Dakota Century Code, relating to reciprocal use of mobility impaired parking privileges.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. A new subsection to section 39-01-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any motor vehicle licensed in another state which displays a special license plate or other special authorized vehicle designation issued by the licensing authority of another state for vehicles used in the transportation of mobility impaired persons must be accorded the same privileges provided in this section for similar vehicles licensed in this state if the laws of the other state provide the same privileges to North Dakota motor vehicles displaying the special identifying certificate or insignia authorized in this section.

Approved March 14, 1989
Filed March 15, 1989

* NOTE: Section 39-01-15 was also affected by sections 2 and 6 of Senate Bill No. 2335, chapter 319.

CHAPTER 444

SENATE BILL NO. 2126
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

VEHICLE DEALER BOND CANCELLATION

AN ACT to create and enact a new section to chapter 39-02 of the North Dakota Century Code, relating to cancellation of vehicle dealer bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Dealer bond cancellation - Reinstatement - Revocation of license. Any dealer required to be bonded by the provisions of title 39 whose bond is canceled by the surety company shall file a new bond with the department before the effective date of the cancellation. The effective date of a bond cancellation must be thirty days after notification by certified mail to the department from the surety company. Any dealer failing to maintain a current surety bond with the department shall return the dealer's license and dealer's plates to the department on or before the effective date of the cancellation. Failure to return the dealer's license or dealer's plates results in automatic revocation by operation of law. The department may order the superintendent to take possession of any dealer's license or dealer's plates not returned to the department as required in this section. The department shall reinstate the dealer's license and dealer's plates if a new bond is received within thirty days of the revocation.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 445

SENATE BILL NO. 2068
(Legislative Council)
(Interim Committee on Public Employees Retirement Programs)

RETIREMENT CONTRIBUTIONS AND RETIREE HEALTH BENEFITS

AN ACT to create and enact two new sections to chapter 54-52.1 of the North Dakota Century Code, relating to the establishment of a retiree health benefits fund for the purpose of prefunding group medical and hospital benefits coverage under the uniform group insurance program for certain retired public employees; to amend and reenact sections 39-03.1-10, 54-52-06, and 54-52-06.1, and subsection 3 of section 54-52.1-03 of the North Dakota Century Code, relating to contributions under the highway patrolmen's retirement system and the public employees retirement system and the continuation of benefits under the uniform group insurance program upon termination or retirement; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-03.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-03.1-10. Contributions by the state of North Dakota. The state of ~~North Dakota~~ shall contribute to the fund a sum equal to ~~seventeen~~ sixteen and seventy-hundredths percent of the monthly salary or wage of a participating member. If the member's contribution is paid by the state under subsection 2 of section 39-03.1-09, the state shall contribute, in addition, an amount equal to the required member's contribution.

SECTION 2. AMENDMENT. Section 54-52-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-06. Employer's contribution to retirement plan. Each governmental unit shall contribute an amount equal to ~~five~~ four and twelve-hundredths percent of the monthly salary or wage of a participating member. If the employee's contribution is paid by the governmental unit under subsection 3 of section 54-52-05, the employer unit shall contribute, in addition, an amount equal to the required employee's contribution. Each governmental unit shall pay monthly such contribution into the retirement fund from its funds appropriated for payroll and salary or any other funds available for such purposes. Any governmental unit failing to pay such contributions monthly ~~shall be~~ is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after ~~such~~ the payment became due. The board shall report to each session of the legislative assembly, or such committee as may be designated by the legislative council to hear such report in the interim between legislative sessions, the contributions necessary, as determined by the actuarial study, to maintain the fund's actuarial soundness.

SECTION 3. AMENDMENT. Section 54-52-06.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-06.1. Contribution by supreme and district court judges - Employer contribution. Each judge of the supreme or district court who is a member of the public employees retirement system ~~shall~~ must be assessed and required to pay monthly five percent of the judge's monthly salary. The assessment must be deducted and retained out of the judge's salary in equal monthly installments. ~~Effective July 1, 1985, the~~ The state shall contribute an amount equal to ~~fifteen~~ fifteen ~~fourteen~~ and fifty-two one-hundredths percent of the monthly salary of a supreme or district court judge who is a participating member of the system, which matching contribution ~~shall~~ must be paid from its funds appropriated for salary, or from any other funds available for such purposes. If the judge's contribution is paid by the state under subsection 3 of section 54-52-05, the state shall contribute, in addition, an amount equal to the required judge's contribution.

* SECTION 4. AMENDMENT. Subsection 3 of section 54-52.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Upon the termination of eligible employment of a member of the legislative assembly, or upon the retirement of an eligible employee who is entitled to a retirement allowance from a department, board, or agency, or upon the termination of employment of an eligible employee not of retirement age who, upon retirement, will receive a deferred retirement allowance from a department, board, or agency, that employee or that employee's surviving spouse may continue as a member of the uniform group under this chapter. ~~The Subject to section 5 of this Act, the department, board, or agency may not make a contribution for this coverage, and each eligible employee or the surviving spouse of that employee shall pay directly to the board the premiums in effect for the coverage then being provided.~~

SECTION 5. Two new sections to chapter 54-52.1 of the North Dakota Century Code are hereby created and enacted to read as follows:

Retiree health benefits fund - Appropriation.

1. The board shall establish a retiree health benefits fund account with the Bank of North Dakota for the purpose of prefunding hospital benefits coverage and medical benefits coverage under the uniform group insurance program for retired eligible employees or surviving spouses of retired eligible employees and their dependents as provided in this Act. The state shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries and wages of all participating members of the highway patrolmen's retirement system under chapter 39-03.1, and one percent of the monthly salaries of all supreme or district court judges who are participating members of the public employees retirement system under chapter 54-52. Each governmental unit that contributes to the public employees retirement system fund under section 54-52-06 shall contribute monthly to the retiree health benefits fund an amount equal to one percent of the monthly salaries or wages of all participating members of the public

* NOTE: Section 54-52.1-03 was also amended by section 2 of Senate Bill No. 2412, chapter 675.

employees retirement system under chapter 54-52. The board, as trustee of the fund and in exclusive control of its administration, shall:

- a. Provide for the investment and disbursement of moneys of the retiree health benefits fund and administrative expenditures in the same manner as moneys of the public employees retirement system are invested, disbursed, or expended under subsection 6 of section 54-52-04.
 - b. Adopt rules necessary for the proper administration of the retiree health benefits fund, including enrollment procedures.
2. All moneys deposited in the fund established under subsection 1, not otherwise appropriated, are hereby appropriated to the board for the purpose of making investments for the fund and to make contributions toward hospital and medical benefits coverage for eligible retired employees or surviving spouses of eligible retired employees and their dependents under the uniform group insurance program.

Eligibility for retiree health benefits - Fixed contribution and reduction factors.

1. The following persons are entitled to receive credit for hospital and medical benefits coverage under subsection 2:
 - a. A member of the highway patrolmen's retirement system or the public employees retirement system receiving retirement benefits under section 39-03.1-11 or 54-52-17.
 - b. The surviving spouse of a member of the highway patrolmen's retirement system or the public employees retirement system who was eligible to receive, or was receiving, retirement benefits under section 39-03.1-11 or 54-52-17.
2. The board shall calculate the allowable monthly credit toward hospital and medical benefits coverage for a person eligible under subsection 1 in an amount equal to three dollars multiplied by the member's or deceased member's number of years of credited service under the highway patrolmen's retirement system or the public employees retirement system. For a member of the public employees retirement system receiving an early retirement benefit or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of sixty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of sixty-four. For a member of the highway patrolmen's retirement system receiving an early retirement benefit or the surviving spouse of that member, the allowable monthly credit must be reduced by three percent if the member terminates employment within one year prior to attaining the age of fifty-five and an additional reduction factor of six percent shall apply for each year the member terminates employment prior to attaining the age of fifty-four.

3. The board shall apply the credit allowable under subsection 2 to the payment of monthly premiums required of each person eligible under subsection 1 for hospital benefits coverage and medical benefits coverage under the uniform group insurance program. However, if the allowable credit exceeds the monthly premium in effect for selected coverage, that amount of the credit which exceeds the premium is forfeited and may not be used for any other purpose.

Approved March 17, 1989

Filed March 17, 1989

CHAPTER 446

HOUSE BILL NO. 1099
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

HIGHWAY PATROLMEN'S RETIREMENT DISABILITY BENEFITS

AN ACT to amend and reenact subsections 3 and 4 of section 39-03.1-11 of the North Dakota Century Code, relating to disability retirement benefits under the highway patrolmen's retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsections 3 and 4 of section 39-03.1-11 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. Retirement dates are as follows:

- a. Early retirement date is the first day of the month next following the month in which the contributor attains the age of fifty years and has completed at least ten years of eligible employment.
- b. Normal retirement date is the first day of the month next following the month in which the contributor attains the age of fifty-five years and has completed at least ten years of eligible employment.
- c. Postponed retirement date is the first day of the month next following the month in which the contributor attains the age of sixty years.
- d. Disability retirement date is the first day of the month after a contributor becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of employment.

4. The board shall calculate retirement benefits as follows:

- a. Normal retirement benefits for all retirees reaching the normal retirement date are payable monthly, and are:
 - (1) The first twenty-five years of credited service multiplied by two and one-half percent of final average salary.
 - (2) All years in excess of twenty-five years of credited service multiplied by one and one-half percent of final average salary.

* NOTE: Subsection 4 of section 39-03.1-11 was also amended by section 1 of Senate Bill No. 2185, chapter 447.

- b. Early retirement benefits are normal retirement benefits accrued to the date of termination of employment, but actuarially reduced to account for benefit payments beginning before the normal retirement date.
- c. Postponed retirement benefits, for all retirees reaching the postponed retirement date, are calculated in the same manner as normal retirement benefits.
- d. Disability retirement benefits are seventy percent of the contributor's final average salary, reduced by any workers' compensation benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 447

SENATE BILL NO. 2185
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

HIGHWAY PATROLMEN'S RETIREMENT BENEFITS

AN ACT to amend and reenact subsection 4 of section 39-03.1-11 and section 39-03.1-27 of the North Dakota Century Code, relating to computation of retirement benefits and amendments to existing rights under the highway patrolmen's retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 4 of section 39-03.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The board shall calculate retirement benefits as follows:

- a. Normal retirement benefits for all ~~retirees~~ contributors reaching the normal retirement date are payable monthly, and are:
 - (1) The first twenty-five years of credited service multiplied by two and ~~one-half~~ three-fourths percent of final average salary.
 - (2) All years in excess of twenty-five years of credited service multiplied by one and ~~one-half~~ three-fourths percent of final average salary.
 - (3) All contributors who retired before July 1, 1989, are entitled to receive benefits equal to two and three-fourths percent of final average salary multiplied by the first twenty-five years of credited service, plus one and three-fourths percent of final average salary multiplied by credited service in excess of twenty-five years.
- b. Early retirement benefits are normal retirement benefits accrued to the date of termination of employment, but actuarially reduced to account for benefit payments beginning before the normal retirement date.
- c. Postponed retirement benefits, for all ~~retirees~~ contributors reaching the postponed retirement date, are calculated in the same manner as normal retirement benefits.

SECTION 2. AMENDMENT. Section 39-03.1-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Subsection 4 of section 39-03.1-11 was also amended by section 1 of House Bill No. 1099, chapter 446.

39-03.1-27. Legislative intent —Effect of amendments upon existing rights.

- 1- The legislative assembly in recognition of the value of good employer-employee relationships and the need to recruit and retain qualified highway patrolmen in this state, hereby declares its intent that the state should provide the comparable contribution for retirement of highway patrolmen's retirement system members as it provides for other state employees. It is the further intent of the legislative assembly that because of the increase in state contributions to the North Dakota highway patrolmen's retirement system, the members of such system shall not obligate the state to additional payments for federal social security benefits for such members.
- 2- Nothing contained in this chapter or in any amendment thereto or any amendment of any section thereof which has been or shall be adopted from time to time, unless the amendment expressly states otherwise, may reduce, modify, or enlarge any rights, privileges, or benefits established prior to the effective date of such amendment. All retirement payments, disability payments, widow's benefits, children's benefits, severance payments, and death payments which have become fixed and determined prior to the effective date of any such amendment or of this section must remain unchanged unless the amendment expressly states otherwise; provided, that all existing pensioners, widows, and dependent children who are receiving payments from the fund as of July 1, 1971, or who have been granted a benefit by the highway patrolmen's retirement board, shall be entitled to receive, from and after that date, an increase of ten percent in such payments, or benefits.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 448

HOUSE BILL NO. 1086
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

HIGHWAY PATROLMEN'S RETIREMENT SPOUSE BENEFITS

AN ACT to amend and reenact subsection 6 of section 39-03.1-11 of the North Dakota Century Code, relating to retirement benefits payable to a surviving spouse under the highway patrolmen's retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 39-03.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. If before retiring a contributor dies after completing ten years of eligible employment, the board shall pay the contributor's accumulated deductions to any beneficiary designated by the contributor with the written consent of the contributor's spouse, if any. If the contributor has not designated any beneficiary under this section, the surviving spouse of the contributor, after reaching the age of fifty-five, is entitled to a monthly retirement benefit of fifty percent of the deceased contributor's accrued normal retirement benefits until the spouse dies may select one of the following optional forms of payment:
 - a. A lump sum payment of the contributor's accumulated deductions as of the date of death.
 - b. Payments for sixty months as calculated for the deceased contributor as if the contributor was age fifty-five at the date of death.
 - c. Payment of a monthly retirement benefit equal to fifty percent of the deceased contributor's accrued normal retirement benefits until the spouse dies.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 449

HOUSE BILL NO. 1091
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

HIGHWAY PATROLMEN'S RETIREMENT BENEFIT OPTIONS

AN ACT to amend and reenact subsection 9 of section 39-03.1-11 of the North Dakota Century Code, relating to optional forms of retirement benefits under the highway patrolmen's retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 39-03.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:
 - a. A lifetime monthly pension, and joint and survivor, with fifty percent or one hundred percent options.
 - b. A joint survivor benefit payable monthly of fifty percent of the deceased contributor's accrued normal retirement benefits payable until the joint survivor dies Life with five-year or ten-year certain options.

Unless a contributor requests that the contributor receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 450

HOUSE BILL NO. 1531
(Representative Solberg)
(Senator Richard)

MOTORCYCLE PERSONALIZED PLATES

AN ACT to amend and reenact section 39-04-10.3 of the North Dakota Century Code, relating to personalized plates for motorcycles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-10.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-10.3. Personalized plates. The department may, in its discretion, provide special plates marked with initials, letters, or combinations of numerals and letters at the request of the registrant, upon application therefor and upon payment of an additional fee of twenty-five dollars per registration period. The department shall make the special plates authorized by this section available for motorcycles. The special plates must contain not more than six letters or a combination of not more than six numerals and letters. In the event of sale or transfer of the vehicle, the special plates may remain with the vehicle or they may be surrendered and, upon application, a regular license plate must be issued without additional cost, or upon payment of the applicable registration fee, the special plates must be transferred to the replacement motor vehicle.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 451

SENATE BILL NO. 2142
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

USE OF ANTIQUE MOTOR VEHICLE

AN ACT to amend and reenact subsection 1 of section 39-04-10.4 of the North Dakota Century Code, relating to registration of antique motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-04-10.4 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any motor vehicle which is at least forty years old may be permanently licensed by the department upon the payment of a registration fee of ten dollars. The department shall design and issue a distinctive number plate for this purpose. In lieu of the distinctive number plate, the owner of the motor vehicle may, at the discretion of the registrar, display on the motor vehicle a number plate from the year in which the motor vehicle was manufactured. The number plate from the year of manufacture may not be used in lieu of a distinctive number plate when it would create a duplication of a number in the recordkeeping system of the department. A number plate from the year of manufacture must be legible and must be restored to the satisfaction of the department. Notwithstanding section 39-04-11, only one number plate needs to be displayed on a motor vehicle licensed under this subsection. Motor vehicles registered under the provisions of this section may not be used in the routine functions of a business or farming operation.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 452

SENATE BILL NO. 2425
(Senators Keller, Wogsland)
(Representatives Lindgren, Nowatzki)

COLLECTOR'S MOTOR VEHICLE FEES

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to registration fees of motor vehicles owned by collectors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Registration of motor vehicles owned by collectors. A person who owns a motor vehicle that is at least twenty-five years old but that is not eligible for registration under section 39-04-10.4 may register that motor vehicle as a collector's motor vehicle. The motor vehicle is eligible for such registration if it is owned and operated solely as a collector's item and if the owner owns another motor vehicle the owner uses for general transportation. A motor vehicle qualifies as a collector's item under this section only if it is operated on public streets and highways for the purpose of driving the vehicle to and from active entry and participation in parades, car shows, car rallies, other public gatherings held for the purpose of displaying or selling the vehicle, and to and from service or storage facilities. An applicant for registration of a vehicle as a collector's motor vehicle shall file an affidavit with the registrar that states the owner's name and address, the make, year, and the manufacturer's identification number of the motor vehicle, and a statement that the motor vehicle is owned and operated solely as a collector's item and not for general transportation purposes. If the registrar is satisfied that the affidavit is true and correct, the registrar shall register the motor vehicle as a collector's motor vehicle on the payment of a registration fee of sixty dollars. The registration is valid as long as the collector's motor vehicle is owned by the person who applied for the registration under this section. The registrar shall design and issue distinctive number plates for collector's motor vehicles registered under this section. A person violating this section or a department rule regarding this section forfeits the right to the registration provided in this section and any registration fees that have been paid.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 453

SENATE BILL NO. 2140
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

MOTOR VEHICLE DUPLICATE TITLE AND PLATE TRANSFER

AN ACT to amend and reenact section 39-04-13, subsection 2 of section 39-04-36, and section 39-05-09.1 of the North Dakota Century Code, relating to duplicate vehicle registration and title and to the fee for transfer of license plates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-13. Duplicates to be obtained of number plate, tab, sticker, or registration card if lost, mutilated, or illegible - Fee. If any number plate, tab, sticker, or registration card issued under the provisions of this chapter is lost, mutilated, or becomes illegible, the person who is entitled thereto shall make immediate application for and obtain a duplicate or substitute upon furnishing information of such fact satisfactory to the department and upon payment of the cost of issuing the duplicate item, not to exceed the sum of five dollars for each duplicate number plate, tab, sticker, or registration card issued. The department may issue a duplicate number plate, tab, sticker, or registration card at no cost to the owner when satisfied the vehicle owner did not receive the original number plate, tab, sticker, or registration card which was issued.

SECTION 2. AMENDMENT. Subsection 2 of section 39-04-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A registration plate currently assigned to a vehicle may be transferred to a similar replacement vehicle at the owner's request, upon payment of the appropriate registration fees applicable to the replacement vehicle and a ~~three~~ five dollar transfer fee. A new registration plate must be assigned to the vehicle being replaced.

SECTION 3. AMENDMENT. Section 39-05-09.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-05-09.1. Lost, stolen, or mutilated certificate of title. If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the first lienholder or, if none, the owner or legal representative of the owner named in the certificate, as shown by the records of the department, shall promptly make application for and may obtain a duplicate upon furnishing information satisfactory to the department, and upon the payment of five dollars. The department may issue a duplicate title at no cost to the first lienholder or, if none, the owner named in the

certificate, when satisfied the first lienholder or owner did not receive the original title which was issued. The duplicate certificate of title must contain the legend "This is a duplicate certificate and may be subject to the rights of a person under the original certificate". It must be mailed to the first lienholder named in it or, if none, to the owner.

A person recovering an original certificate of title for which a duplicate has been issued shall promptly surrender the original certificate to the department.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 454

SENATE BILL NO. 2113
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

VEHICLE REGISTRATION FEE EXEMPTIONS

AN ACT to amend and reenact subdivisions i, j, l, and o of subsection 2 of section 39-04-18 of the North Dakota Century Code, relating to exemptions from vehicle registration fees for military personnel, disabled American veterans, well drillers, and former prisoners of war.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivisions i, j, l, and o of subsection 2 of section 39-04-18 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

- i. ~~Motor vehicles~~ Vehicles owned and operated by nonresident military personnel stationed in this state and operated by such military personnel or their dependents, provided such ~~motor~~ vehicle is registered in the state or territory whereof such military person is a resident, and provided further that current license plates from such state or territory are displayed on such ~~motor~~ vehicle.
- j. Passenger motor vehicles, house cars, or pickup trucks not exceeding ten thousand pounds [4535.92 kilograms] gross weight owned and operated by a disabled veteran under the provisions of Public Law 79-663 [38 U.S.C. 1901]; provided, however, that such vehicles display a distinctive license plate issued by the department upon the payment of five dollars. This exemption applies to no more than two such motor vehicles owned by a disabled veteran at any one time.
- l. Motor vehicles owned and operated by the holder of a valid building mover's permit issued by the public service commission, or by a resident well driller; provided, however, that such vehicles are used only for moving buildings or building moving equipment, or on which is mounted well-drilling equipment are used only for drilling water wells or moving water well-drilling equipment; provided, further, that such vehicles display a license plate issued by the registrar of motor vehicles upon the payment of a fee of twenty-five dollars for two axle trucks, fifty dollars for tandem axle trucks and single axle truck-tractor units, and seventy-five dollars for each tandem axle truck-tractor unit.

Any vehicle which has been issued this special motor vehicle license may be registered under the regular motor vehicle registration law, by payment of the difference between

the amount paid for the special motor vehicle license and the regular registration fee for such vehicle.

Any vehicle which has been issued this special motor vehicle license and is found being operated upon the highways of this state without being equipped with special house-moving or well-drilling equipment, shall forfeit the fee paid and, in addition, must be required to register under the regular motor vehicle registration law of this state. None of the above limitations may be construed as restricting the operation of the special licensed vehicle when such operation would not require a greater fee than that paid for this operation.

- o. Passenger motor vehicles, house cars, or pickup trucks not exceeding ten thousand pounds [4535.92 kilograms] gross weight owned and operated by a resident who, while serving in the United States armed forces, was a prisoner of war and has received an honorable discharge from the United States armed forces; provided, however, that the vehicles display a distinctive license plate issued by the department upon the payment of five dollars. This exemption also applies to any passenger motor vehicle, house car, or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight subsequently purchased or acquired by such a former prisoner of war; provided, that the exemption provided by this subdivision is allowed only with respect to one motor vehicle owned by such a former prisoner of war at any one time.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 455

HOUSE BILL NO. 1422
 (Representatives Nowatzki, Ness, O'Shea)
 (Senators D. Meyer, Richard, Axtman)

FARM VEHICLE REGISTRATION FEES

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to special number plates for farm vehicles; to amend and reenact subsection 5 of section 39-04-19 of the North Dakota Century Code, relating to registration of certain farm motor vehicles; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 39-04-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. Trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than ~~eighty-two~~ one hundred five thousand five hundred pounds [more than 9071.84 but not more than ~~37,194.57~~ 47,854.00 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than ~~eighty-two~~ one hundred five thousand five hundred pounds [more than 9071.84 but not more than ~~37,194.57~~ 47,854.00 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis with other farmers between farms and the usual local trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire. In addition to the penalty provided in section 39-04-41, any person violating this subsection shall license for the entire license period the farm vehicle at the higher commercial vehicle rate in accordance with the weight carried by the farm vehicle at the time of the violation.

Gross Weights	YEARS REGISTERED				
	1st, 2nd, 3rd, 4th, and 5th Years	6th and 7th Years	8th and 9th Years	10th and Subsequent Years	
20,001- 22,000	\$ 88.00	\$ 74.00	\$ 60.00	\$ 42.00	
22,001- 24,000	93.00	78.00	63.00	44.00	
24,001- 26,000	101.00	84.00	67.00	46.00	
26,001- 28,000	111.00	92.00	73.00	50.00	
28,001- 30,000	121.00	100.00	79.00	54.00	
30,001- 32,000	136.00	113.00	90.00	63.00	
32,001- 34,000	146.00	121.00	96.00	67.00	

34,001-	36,000	156.00	129.00	102.00	71.00
36,001-	38,000	166.00	137.00	108.00	75.00
38,001-	40,000	176.00	145.00	114.00	79.00
40,001-	42,000	186.00	153.00	120.00	83.00
42,001-	44,000	196.00	161.00	126.00	87.00
44,001-	46,000	206.00	169.00	132.00	91.00
46,001-	48,000	216.00	177.00	138.00	95.00
48,001-	50,000	226.00	185.00	144.00	99.00
50,001-	52,000	246.00	203.00	160.00	113.00
52,001-	54,000	256.00	211.00	166.00	117.00
54,001-	56,000	266.00	219.00	172.00	121.00
56,001-	58,000	276.00	227.00	178.00	125.00
58,001-	60,000	286.00	235.00	184.00	129.00
60,001-	62,000	296.00	243.00	190.00	133.00
62,001-	64,000	306.00	251.00	196.00	137.00
64,001-	66,000	316.00	259.00	202.00	141.00
66,001-	68,000	326.00	267.00	208.00	145.00
68,001-	70,000	336.00	275.00	214.00	149.00
70,001-	72,000	346.00	283.00	220.00	153.00
72,001-	74,000	356.00	291.00	226.00	157.00
74,001-	76,000	366.00	299.00	232.00	161.00
76,001-	78,000	376.00	307.00	238.00	165.00
78,001-	80,000	386.00	315.00	244.00	169.00
80,001-	82,000	396.00	323.00	250.00	173.00
82,001-	84,000	406.00	345.00	293.00	249.00
84,001-	86,000	426.00	362.00	307.00	261.00
86,001-	88,000	446.00	379.00	321.00	273.00
88,001-	90,000	466.00	396.00	335.00	285.00
90,001-	92,000	486.00	413.00	349.00	297.00
92,001-	94,000	506.00	430.00	363.00	309.00
94,001-	96,000	526.00	447.00	377.00	321.00
96,001-	98,000	546.00	464.00	391.00	333.00
98,001-	100,000	566.00	481.00	405.00	345.00
100,001-	102,000	586.00	498.00	419.00	357.00
102,001-	104,000	606.00	515.00	433.00	369.00
104,001-	105,500	626.00	532.00	447.00	381.00

SECTION 2. A new section to chapter 39-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Special number plates for farm vehicles. The registrar of motor vehicles shall issue, without an additional charge, upon application and payment of the registration fee, special number plates or validation decals making them distinctly different from other number plates, to any person registering a truck or combination of trucks and trailers as a farm vehicle under section 39-04-19. The registrar shall determine the form and size of the special number plates or validation decals and shall adopt rules governing the issuance of these special number plates or validation decals.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on January 1, 1990.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 456

SENATE BILL NO. 2144
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

VEHICLE REGISTRATION VIOLATIONS

AN ACT to amend and reenact section 39-04-37 of the North Dakota Century Code, relating to violations of vehicle registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-04-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-04-37. Violations of registration provisions. It is unlawful for any person to commit any of the following acts:

1. To operate, or for the owner thereof knowingly to permit anyone to operate, upon a highway any ~~motor~~ vehicle the registration of which has been canceled or revoked, or ~~which is not registered for which the registration fees required in this title have not been paid, or which does not have attached thereto and displayed thereon a number plate, plates, or validation tabs assigned thereto by the registrar for the current registration period, subject to the exemptions allowed in this chapter title.~~
2. To display or cause or permit to be displayed, or to have in possession, any registration card, registration number plate, or validation tabs knowing the same to be fictitious or to have been canceled, revoked, suspended, or altered.
3. To lend any registration number plate, registration card, or validation tabs to any person not entitled thereto, or knowingly permit the use of any registration number plate or registration card by any person not entitled thereto.
4. To fail or refuse to surrender to the department, upon demand, any registration card, registration number plate, or validation tab which has been suspended, canceled, or revoked as is provided in this chapter.
5. To use a false or fictitious name or address in any application for the registration of any vehicle, or for any renewal or duplicate thereof, or knowingly to make a false statement or knowingly to conceal a material fact or otherwise to commit a fraud in any application.
- 6- To operate a passenger motor vehicle without payment of the registration fees as required in subsection 2 of section 39-04-19.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 457

HOUSE BILL NO. 1337
(Representatives Kolbo, Carlson, Haugland)
(Senators Lashkowitz, Heinrich, Lips)

PUBLIC TRANSPORTATION FUND

AN ACT to create and enact a new chapter to title 39 of the North Dakota Century Code, relating to establishing a public transportation fund to provide payments to political subdivisions and nonprofit corporations for the purpose of establishing and operating public transportation systems; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 39 of the North Dakota Century Code is hereby created and enacted to read as follows:

Public transportation fund - Administration of the fund by commissioner. The state highway commissioner shall administer the public transportation fund. Payments disbursed under this chapter shall be paid from moneys deposited in the fund. The expenses arising from administration of the fund shall be paid from the fund within the limits of legislative appropriations.

Additional registration fee - Deposit in fund. At the time of registering a motor vehicle subject to registration under section 39-04-19, the owner shall pay to the registrar of motor vehicles in addition to the registration fee a fee of one dollar for each motor vehicle registered. The fee shall be deposited with the state treasurer, who shall credit the fee to the public transportation fund.

Definitions. In this Act, unless the context or subject matter otherwise requires:

1. "Public transportation" means the vehicular transportation of persons from place to place within this state, but does not include the provision of transportation facilities otherwise provided by public funds, such as roads, streets, highways, bridges, lighting equipment, or signs.
2. "Ridership" means a one-way trip provided to any one person in a motorized vehicle designed to carry eight or more persons in an enclosed area with separate seating for each person.
3. "Transportation provider" means a political subdivision or any nonprofit corporation that provides transportation to the public, especially to elderly and handicapped citizens.

Distribution of funds.

1. Moneys appropriated by the legislative assembly to the public transportation fund shall be disbursed under guidelines issued by the commissioner. The funds shall be used by transportation providers to establish and maintain public transportation, especially for the elderly and handicapped, and may be used to contract to provide public transportation, as matching funds to procure money from other sources for public transportation, and for other expenditures authorized by the commissioner.
2. Following authorization of the commissioner, the public transportation funds shall be paid by the state treasurer to transportation providers in each county. Each county shall receive six thousand one hundred dollars plus fifty cents per capita of population in the county, based upon the latest regular or special official federal census. If there are multiple transportation providers in one county, then the base amount of six thousand one hundred dollars will be divided equally among the providers, and the additional per capita amount will be based upon the percentage of elderly and handicapped ridership provided by each transportation provider within the county.
3. Unless otherwise provided by law, any moneys remaining in the fund at the end of each biennium shall be put back into the public transportation fund for redistribution.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the public transportation fund in the state treasury, not otherwise appropriated, the sum of \$1,340,000, or so much thereof as may be necessary, to the state highway commissioner for the purpose of carrying out this Act for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved April 11, 1989
Filed April 11, 1989

CHAPTER 458

SENATE BILL NO. 2134
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

ODOMETER DISCLOSURE

AN ACT to amend and reenact subsection 1 of section 39-05-05 of the North Dakota Century Code, relating to contents of an application for certificate of title.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-05-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An application for a certificate of title must be made upon an appropriate form furnished or approved by the department and must contain all of the following:
 - a. A full description of the vehicle, including the name of the manufacturer, either the engine, serial, or identification number, and any other distinguishing marks.
 - b. A statement as to whether the vehicle is new or used.
 - c. A statement of the applicant's title and of any liens or encumbrances upon the vehicle.
 - d. The name and address of the person to whom the certificate must be delivered.
 - e. The names and addresses of any lienholders in the order of their priority and the dates of their security agreements.
 - f. If the vehicle for which certificate of title is sought is a specially constructed, reconstructed, or foreign vehicle, such facts must be stated in the application.
 - g. The buyer's street address, city, and county, or township and county, of residence and the dealer shall make specific inquiry relative thereto before filling in such information on the application.
 - h. The department may require odometer disclosure information as required under the Truth in Mileage Act of 1986 [Pub. L. 99-579].
 - i. Such other information as the department may require.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 459

SENATE BILL NO. 2138
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

MOTOR VEHICLE TITLE PROOF OF OWNERSHIP

AN ACT to amend and reenact subsection 1 of section 39-05-20 of the North Dakota Century Code, relating to obtaining certificate of title upon inability to obtain an assigned certificate of title for a vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-05-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. When the transferee of a vehicle is unable to obtain a properly assigned certificate of title for a vehicle, and makes application for a new certificate and presents satisfactory proof of ownership, the department may cancel the old certificate and issue a new certificate to the transferee. Satisfactory proof of ownership must include compliance by the transferee with the procedures outlined in title 35. The department may establish procedures for determining satisfactory proof of ownership of a vehicle in those cases where the department is unable to determine the legal owner of record. Any person aggrieved by a decision of the department as to ownership of a vehicle may appeal that decision to the district court under chapter 28-32.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 460

HOUSE BILL NO. 1172
(Committee on Transportation)
(At the request of the Highway Department)

MOTOR VEHICLE OPERATOR'S LICENSES

AN ACT to create and enact a new subsection to section 39-06-02 of the North Dakota Century Code, relating to national guard operator's licenses; and to amend and reenact subsection 1 of section 39-06-01, sections 39-06-04, 39-06-13, subsection 7 of section 39-06-14, and section 39-16-03 of the North Dakota Century Code, relating to the surrender of drivers' licenses, instruction permits, the examination of applicants, and the recovery of canceled, suspended, or revoked licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A person, unless expressly exempted in this section, may not drive any motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state unless the person has a valid license as an operator under the provisions of this chapter or a temporary operator's permit issued under chapter 39-20. A person may not receive an operator's license unless and until that person surrenders to the commissioner all ~~valid operator's licenses in the person's possession~~ issued to the person by any other jurisdiction. ~~All surrendered licenses must be returned by the commissioner to the issuing department together with information that the licensee is now licensed in a new jurisdiction.~~ When a license issued by another jurisdiction is surrendered, the commissioner shall notify the issuing jurisdiction of its surrender. A person may not have more than one valid operator's license at any time.

SECTION 2. A new subsection to section 39-06-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

National guard - Military vehicle. A member of the North Dakota national guard may operate any military vehicles as authorized by a national guard operator's license while on duty.

SECTION 3. AMENDMENT. Section 39-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-04. Instruction permit. Any person who is at least fourteen years of age may apply to the commissioner for an instruction permit. The commissioner may in his discretion issue to the applicant an instruction permit which entitles the applicant while having such permit in his immediate possession to drive a motor vehicle upon the public highways for a period of

one year when accompanied by a licensed operator who holds a license corresponding to the vehicle he operates and has had at least one year of driving experience and who is occupying a seat beside the driver, ~~except in the event the permittee is operating a motorcycle.~~ Persons holding an instruction permit for the operation of a motorcycle shall operate the motorcycle only during hours when the use of headlights is not required pursuant to section 39-21-01, and may not carry or transport any passenger. Any ~~such~~ instruction permit may be renewed or a new permit issued for an additional period. A person who is not yet eighteen years of age is not eligible for a license ~~under this chapter~~ until that person has had an instruction permit issued ~~under this chapter~~ for at least three months. The commissioner may recognize an instruction permit issued by another jurisdiction in computing the three-month instructional period.

SECTION 4. AMENDMENT. Section 39-06-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-13. Examination of applicants. The commissioner shall examine every applicant for an operator's license, except as otherwise provided in this chapter. Such examination must include a test of the applicant's eyesight, ability to read and understand highway signs regulating, warning, and directing traffic, and knowledge of the traffic laws of this state. An actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle is also required, but may be waived for those applicants who have successfully passed such a test in some other state. The commissioner shall make provision for giving an examination either in the county where the applicant resides or at a place adjacent thereto reasonably convenient to the applicant within not more than thirty days from the date the application is received. Operators' examinations must be given at locations designated by the commissioner. The commissioner may require such other physical or mental examination as may be deemed advisable. ~~After three unsuccessful attempts to pass, within any six-month period, all parts of any license examination required to be taken pursuant to this chapter; no person may be allowed to make another attempt to pass any unsuccessfully attempted parts of the license examination within four months of the last unsuccessful attempt.~~

* SECTION 5. AMENDMENT. Subsection 7 of section 39-06-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. The commissioner may issue a motorized bicycle operator's permit to an applicant who is at least fourteen years of age. To obtain a permit, the applicant shall pay a fee of ten dollars and take a written examination of the applicant's knowledge of traffic laws and general rules of the road. If the applicant passes the written examination and the commissioner is satisfied that the applicant has adequate eyesight, the commissioner may issue the applicant a motorized bicycle operator's permit, even if the applicant does not have an operator's license. The permit expires in the same manner as an operator's license. A person who has an operator's license, a temporary permit, an ~~instructor's instruction~~ permit, or a motorcycle permit is not required to obtain a motorized bicycle operator's permit.

** SECTION 6. AMENDMENT. Section 39-16-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 39-06-14 was also amended by section 4 of Senate Bill No. 2055, chapter 303, and section 1 of House Bill No. 1666, chapter 461.

** NOTE: Section 39-16-03 was also amended by section 1 of House Bill No. 1351, chapter 473.

39-16-03. Abstract - Not admissible in evidence - Fee. The commissioner upon request shall furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter which must include the convictions, adjudications, and admissions of commission of traffic offenses of any driver and suspensions, revocations, and restrictions of a person's driving privileges.

Copies of abstracts are not admissible as evidence in any civil or criminal trial arising out of a motor vehicle accident.

A fee of ~~two~~ three dollars must be paid for each abstract of any operating record. The commissioner shall send an additional copy of the abstract to the driver whose abstract was requested, accompanied by a statement identifying the person making the request. No abstract or statement may be sent to a driver where the request for the driver's abstract was made by the federal bureau of investigation or the United States central intelligence agency, or their agents, or by any law enforcement agency of this state, or of its political subdivisions.

Approved March 16, 1989
Filed March 16, 1989

CHAPTER 461

HOUSE BILL NO. 1666
(Representatives Timm, R. Anderson)
(Senators Schoenwald, Satrom)
(Approved by the Committee on Delayed Bills)

COMMERCIAL DRIVER LICENSING

AN ACT to create and enact chapter 39-06.2 of the North Dakota Century Code, relating to commercial driver's licensing, testing for and issuance of a commercial driver's license, employer and employee responsibilities, suspension or revocation of a commercial driver's license, and classification of commercial motor vehicles; to amend and reenact section 39-06-14, subsection 3 of section 39-06-17, subsections 4 and 7 of section 39-06-32, and subsections 1, 2, 3, and 4 of section 39-20-07 of the North Dakota Century Code, relating to classification of drivers' licenses, a restricted operator's license or permit, refusal of a chemical test in another state, and blood alcohol concentration and its applicability to chapter 39-06.2; and to provide an effective date and application of this Act to existing operators' licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 39-06-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-14. Licenses issued to operators - General - Classified driver's license.

1. The commissioner shall, upon payment of a ten dollar fee, issue to every qualified applicant an operator's license as applied for in the form prescribed by the commissioner. The license must bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. If the licensee is under the age of twenty-one, the photograph must be against a color background that is different from the color used for other licensees. If requested on the license application, the license issued by the commissioner must identify the licensee as a donor under the provisions of chapter 23-06.1. No license is valid until it has been signed by the licensee with the licensee's usual signature. For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The commissioner may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on operator's licenses.

2. ~~Repealed by S.L. 1977, ch. 345, § 2.~~

* NOTE: Section 39-06-14 was also amended by section 5 of House Bill No. 1172, chapter 460, and section 4 of Senate Bill No. 2055, chapter 303.

- 3- a. All applicants holding a valid North Dakota operator's license making application for renewal, must be issued a class 3 D license without being subjected to an examination as herein provided.
- b. All applicants, except those holding a valid North Dakota operator's license who will be issued a class 3 D license, applying for issuance of operator licenses must be issued a classified license after having been required to submit to an examination in the type of motor vehicle or combination of vehicles for which license is desired and which license shall authorize the holder to drive the vehicles set forth in a class as provided in section 39-06.2-09, or as follows:

~~(1) Class 1- Any vehicle or combination of vehicles except vehicles under class 4-~~

~~(2) Class 2- Any vehicle or combination of vehicles except-~~

~~(a) Vehicles towing a trailer when the trailer being towed has a gross weight in excess of six thousand pounds {2721.55 kilograms}.~~

~~(b) Vehicles under class 4-~~

~~(3) Class 3- Any two-axle or tandem-axle vehicle except-~~

~~(a) A truck tractor combination as defined in subsection 84 of section 39-01-01-~~

~~(b) A bus more than eighty inches {20.32 decimeters} in width and designed to carry more than thirteen persons and used for carrying passengers-~~

~~(c) A two-axle or tandem-axle vehicle or combination of vehicles when towing a trailer when the trailer being towed has a gross weight in excess of six thousand pounds {2721.55 kilograms}.~~

~~(d) Vehicles under class 4-~~

An operator with a class 3 license may operate a farm tractor towing another vehicle having a gross weight in excess of six thousand pounds {2721.55 kilograms}, and a truck towing a trailer, semitrailer, or farm trailer when the gross weight of the trailer, semitrailer, or farm trailer, not including the weight of the towing vehicle, does not exceed twenty-four thousand pounds {10,886.22 kilograms}.

- (1) Class D. Any single vehicle with a gross vehicle weight rating of twenty-six thousand pounds [11793.40 kilograms] or less or any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand pounds [4535.92 kilograms]. A driver with a class D license may operate a farm tractor towing another vehicle having a gross weight in excess of ten thousand pounds [4535.92

kilograms], and a truck towing a trailer, semitrailer, or farm trailer when the gross weight of the trailer, semitrailer, or farm trailer, not including the weight of the towing vehicle, does not exceed sixteen thousand pounds [7257.48 kilograms].

(2) A house car or a vehicle towing a travel trailer being used solely for personal purposes may be driven with a class D license.

(3) Farm exemption. The holder of a class D license may operate any two-axle or tandem-axle motor vehicle, a farm tractor towing another vehicle having a gross weight in excess of six thousand pounds [2721.55 kilograms], and a truck towing a trailer, semitrailer, or farm trailer when the gross weight of the trailer, semitrailer, or farm trailer, not including the weight of the towing vehicle, does not exceed twenty-four thousand pounds [10886.22 kilograms] exempted under subsection 3 of section 39-06.2-06, except:

(a) A truck tractor as defined in subsection 84 of section 39-01-01.

(b) A bus designed to carry sixteen or more passengers, including the driver.

(4) Class 4 M. Any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding motorized bicycles, tractors, and vehicles on which the operator or passengers, or both, ride within an enclosed cab. A class M vehicle may not be operated under a class A, B, C, or D license.

c. The holder of a class ~~1, 2, or 3~~ A, B, C, or D license may receive a class 4 M endorsement upon successful completion of an examination.

d. The holder of a class A, B, or C license may drive any vehicle in that classification, or lesser classification, except a class M vehicle.

~~d.~~ e. An applicant sixteen years of age and older, who does not hold a current valid operator's license may be issued a class 4 M learner's permit after successful completion of a written examination. The class 4 M license will be issued after the applicant has successfully completed a driver's examination.

~~e.~~ f. Applicants fourteen or fifteen years of age may be issued a motorcycle learner's permit if the applicant is enrolled in or has completed an approved motorcycle safety course. Applicants for a motorcycle operator's license who are under sixteen shall hold an initial learner's permit for at least two months before applying for a class 4 M operator's license, shall have completed an approved motorcycle safety course, and shall hold a valid motorcycle learner's permit at the time of application.

Any person under sixteen years of age who holds a permit or license is restricted to the operation of a motorcycle powered with an engine of two hundred fifty cubic centimeters, or less, displacement. Evidence that the applicant has satisfactorily completed a motorcycle safety course which meets the minimum requirements of the motorcycle safety foundation must accompany the application.

~~4. Repealed by S.L. 1981, ch. 384, § 8.~~

- 5- 3. Any holder of a classified license who drives a motor vehicle otherwise than as permitted by the class of license issued to him must be deemed to be driving a motor vehicle without being duly licensed by this chapter. The holder of a classified license who desires to obtain a different class license in one of the classes provided by this chapter must exchange or renew such license. The commissioner may impose such rules and regulations as he may deem necessary with respect to such renewals or exchanges for the proper administration of this chapter. No class A, B, or 2 C license may be issued to any person under eighteen years of age.
- 6- 4. If any holder of a license issued pursuant to this chapter suffers permanent loss of use of a hand, arm, foot, leg, or eye, he shall, before operating any motor vehicle or motorcycle, make a report thereof to the commissioner who shall take such reasonable action as may be proper under the provisions of this chapter as to reexamination to determine if the licensee is capable of operating vehicles for which the individual is licensed.
- 7- 5. The commissioner may issue a motorized bicycle operator's permit to an applicant who is at least fourteen years of age. To obtain a permit, the applicant shall pay a fee of ten dollars and take a written examination of the applicant's knowledge of traffic laws and general rules of the road. If the applicant passes the written examination and the commissioner is satisfied that the applicant has adequate eyesight, the commissioner may issue the applicant a motorized bicycle operator's permit, even if the applicant does not have an operator's license. The permit expires in the same manner as an operator's license. A person who has an operator's license, a temporary permit, an instructor's permit, or a motorcycle permit is not required to obtain a motorized bicycle operator's permit.

SECTION 2. AMENDMENT. Subsection 3 of section 39-06-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A restricted operator's license or permit to operate the parent's or guardian's automobile, or an automobile which is equipped with dual controls and while accompanied by a qualified instructor, may be issued to any child, who is at least fourteen years of age, and otherwise qualified, upon the written recommendation of the parent or guardian. No operator's license may be issued until the child, accompanied by the parent or guardian, appears in person and satisfies the commissioner that:
- a. The child is at least fourteen years of age.
 - b. The child is qualified to operate an automobile safely.

- c. It is necessary for the child to drive the parent's or guardian's automobile without being accompanied by an adult.
- d. The child has completed a course of classroom instruction and a course of behind-the-wheel instruction acceptable to the commissioner; or, in the alternative, has successfully completed a course at an approved commercial driver training school.

The parent or guardian, at all times is responsible for any and all damages growing out of the negligent operation of a motor vehicle by any such child. The provisions of this subsection do not authorize the child to drive a commercial truck, motorbus, or taxicab, or a truck having a gross weight in excess of fifty thousand pounds or greater except the holder of a Class D license, fourteen or fifteen years of age, may drive a farm motor vehicle having a gross weight of fifty thousand pounds [22679.62 kilograms] when used to transport agricultural products, farm machinery, or farm supplies to or from a farm when so operated within one hundred fifty miles [241.40 kilometers] of the driver's farm.

SECTION 3. AMENDMENT. Subsections 4 and 7 of section 39-06-32 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. Refusal to submit to an implied consent chemical ~~blood alcohol~~ alcohol test in another state. For purposes of this subsection the specific requirements for establishing a refusal used in the other state may not be considered, and photostatic copies of the records of the other state's drivers licensing authority are sufficient evidence of the refusal whether or not those copies are certified. The suspension must be for the same length of time as the revocation in section 39-20-04. If the refusal arose out of an arrest or stop of a person while operating a commercial motor vehicle, the period of suspension must be the same as the period of revocation provided in section 39-20-04.
7. An administrative decision in another state that the licensee's privilege to drive in that state is suspended or revoked because of a violation of that state's law forbidding motor vehicle operation with ~~a blood an~~ an alcohol concentration of at least ten one-hundredths of one percent by weight. The specific requirements for establishing the violation in the other state may not be considered and certified copies of the records of the other state's drivers licensing authority are sufficient evidence of the violation. The suspension must be for the same duration as the suspension in section 39-20-04.1.

SECTION 4. Chapter 39-06.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

39-06.2-01. Uniform Commercial Driver's License Act. The purpose of this chapter is to implement the federal Commercial Motor Vehicle Safety Act of 1986 [Title XII of Pub. L. 99-570] and reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by:

1. Permitting commercial drivers to hold only one license;

2. Disqualifying commercial drivers who have committed certain serious traffic violations, or other specified offenses; and
3. Strengthening commercial driver's licensing and testing standards.

This chapter is a remedial law which should be liberally construed to promote the public health, safety, and welfare. To the extent that this chapter conflicts with general driver's licensing provisions, this chapter prevails. Where this chapter is silent, the general driver's licensing provisions apply.

39-06.2-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.
2. "Alcohol concentration" means:
 - a. The number of grams of alcohol per one hundred milliliters of blood;
 - b. The number of grams of alcohol per two hundred ten liters of breath; or
 - c. The number of grams of alcohol per sixty-seven milliliters of urine.
3. "Commercial driver's instruction permit" means a permit issued under subsection 4 of section 39-06.2-07.
4. "Commercial driver's license" means a license issued under this chapter which authorizes an individual to drive a class of commercial motor vehicle.
5. "Commercial driver's license information system" means the information system established under the Commercial Motor Vehicle Safety Act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.
6. "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:
 - a. If the vehicle has a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms] or such lesser rating as determined by federal regulation;
 - b. If the vehicle is designed to transport sixteen or more passengers, including the driver; or
 - c. If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 CFR part 172, subpart F.
7. "Controlled substance" means any substance so classified under section 802(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

and includes all substances listed on schedules I through V, of 21 CFR part 1308, as they may be revised from time to time.

8. "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
9. "Disqualification" means a withdrawal of the privilege to drive a commercial motor vehicle.
10. "Drive" means to drive, operate, or be in physical control of a motor vehicle.
11. "Driver" means any person who drives, operates, or is in physical control of a commercial motor vehicle, or who is required to hold a commercial driver's license.
12. "Driver's license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle.
13. "Drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving, and includes any controlled substance.
14. "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.
15. "Felony" means any offense under state or federal law which is punishable by death or imprisonment for a term exceeding one year.
16. "Foreign jurisdiction" means any jurisdiction other than a state of the United States.
17. "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight or a single or a combination (articulated) vehicle, or registered gross weight, whichever is greater. The gross vehicle weight rating of a combination (articulated) vehicle (commonly referred to as the "gross combination weight rating") is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of the towed unit or units.
18. "Hazardous materials" has the meaning as that found in section 103 of the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.].
19. "Motor vehicle" means every vehicle that is self-propelled, and every vehicle that is propelled by electric power obtained from

overhead trolley wires but not operated upon rails, except vehicles moved solely by human power and motorized wheel chairs.

20. "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.

21. "Serious traffic violation" means a conviction when operating a commercial motor vehicle of:

a. Excessive speeding, involving a single charge of any speed fifteen miles per hour or more, above the posted speed limit;

b. Reckless driving, as defined under section 39-08-03 or local ordinance, including charges of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property, improper or erratic traffic lane changes, or following the vehicle ahead too closely; or

c. A violation of any state or local law related to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident.

22. "State" means a state of the United States or the District of Columbia.

23. "United States" means the fifty states and the District of Columbia.

39-06.2-03. Limitation on number of driver's licenses. No person who drives a commercial motor vehicle may have more than one driver's license.

39-06.2-04. Notification required by driver.

1. Notification of convictions.

a. To state: Any driver holding a commercial driver's license issued by this state who is convicted of violating any state or local ordinance relating to motor vehicle traffic control in any other state or any federal, provincial, territorial, or municipal law of Canada, other than parking violations, must notify the commissioner in the manner specified by the commissioner within thirty days of the date of conviction.

b. To employers: Any driver holding a commercial driver's license issued by this state who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this or any other state or any federal, provincial, territorial, or municipal law of Canada, other than parking violations, must notify the driver's employer in writing of the conviction within thirty days of the date of conviction.

2. Notification of suspensions, revocations, and cancellations. Any driver whose commercial driver's license is suspended, revoked, or canceled by any state, or who loses the privilege to drive a commercial motor vehicle in any state for any period, including being disqualified from driving a commercial motor vehicle, must

notify the employer of that fact before the end of the business day following the day the driver received notice of that fact.

3. Notification of previous employment. Any person who applies to be a commercial motor vehicle driver must provide the employer, at the time of the application, with the following information for the ten years preceding the date of application:

- a. A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle;
- b. The dates between which the applicant drove for each employer; and
- c. The reason for leaving that employer.

The applicant must certify that all information furnished is true and complete. An employer may require an applicant to provide additional information.

39-06.2-05. Employer responsibilities.

1. Each employer shall require the applicant to provide the information specified in section 39-06.2-04.
2. No employer may knowingly allow, permit, or authorize a driver to drive a commercial motor vehicle during any period:
 - a. In which the driver's commercial driver's license is suspended, revoked, or canceled by any state or in which the driver is currently disqualified from driving a commercial vehicle or subject to an out-of-service order in any state; or
 - b. In which the driver has more than one driver's license.

39-06.2-06. Commercial driver's license required.

1. Except when driving under a commercial driver's instruction permit and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle on the highways of this state unless the person holds and is in immediate possession of a commercial driver's license with applicable endorsements valid for the vehicle the person is driving. This subsection does not apply:
 - a. When the vehicle being driven is a house car or a vehicle towing a travel trailer being used solely for personal rather than commercial purposes.
 - b. When the vehicle being driven constitutes emergency or firefighting equipment necessary to the preservation of life or property.
2. No person may drive a commercial motor vehicle on the highways of this state while the person's driving privilege is suspended, revoked, or canceled, while subject to a disqualification.

3. The provisions of this chapter are waived, as to farm-to-market operations by farmers, but limited to those operators of a farm vehicle that is:
 - a. Controlled and operated by a farmer.
 - b. Used to transport either agricultural products, farm machines, farm supplies, or both, to or from a farm.
 - c. Not used in the operations of a common or contract carrier.
 - d. Used within one hundred fifty miles of the person's farm.

39-06.2-07. Commercial driver's license qualification standards.

1. Testing.

- a. General. No person may be issued a commercial driver's license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulations enumerated in 49 CFR part 383, subparts G and H, and has satisfied all other requirements of the Commercial Motor Vehicle Safety Act in addition to other requirements imposed by state law or federal regulation. The tests must be prescribed and conducted by the commissioner. The applicant must pay a fee of five dollars for each of the tests.
 - b. Third-party testing. The commissioner may authorize a person, including an agency of this or another state, an employer, a private driver's training facility, or other private institution, or a department, agency, or instrumentality of local government, to administer the skills test specified by this section, provided:
 - (1) The test is the same as that which would otherwise be administered by the state; and
 - (2) The third party has entered into an agreement with this state which complies with requirements of 49 CFR part 383.75.
2. Waiver of skills test. The commissioner may waive the skills test specified in this section for a commercial driver's license applicant who meets the requirements of 49 CFR part 383.77.
3. Limitations on issuance of license. A commercial driver's license, or commercial driver's instruction permit, may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked, or canceled in any state; nor may a commercial driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all such licenses. The commissioner shall notify the issuing state of the surrender of the license.

4. Commercial driver's instruction permit.

- a. A commercial driver's instruction permit may be issued to an individual who holds a valid class D driver's license who has passed the vision and written tests required for an equivalent commercial driver's license.
- b. The commercial driver's instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period. The holder of a commercial driver's instruction permit may, unless otherwise disqualified, drive a commercial motor vehicle only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle.

39-06.2-08. Application for commercial driver's license.1. The application for a commercial driver's license or commercial driver's instruction permit must include the following:

- a. The full name and current mailing address of the person;
- b. A physical description of the person, including sex, height, weight, and eye and hair color;
- c. Date of birth;
- d. The applicant's social security number;
- e. The person's signature;
- f. The certifications including those required by 49 CFR part 383.71(a);
- g. Any other information required by the commissioner; and
- h. A consent to release driving record information.

The application must be accompanied by an application fee of fifteen dollars.

2. When the holder of a commercial driver's license changes the holder's name or mailing address, an application for a duplicate license must be made as provided in section 39-06-18.
3. No person who has been a resident of this state for thirty days may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.
4. Any person who knowingly falsifies information or certifications required under subsection 1 is subject to suspension, revocation, or cancellation of the person's commercial driver's license for a period of at least sixty consecutive days.

39-06.2-09. Commercial driver's license.

1. Content of license. The commercial driver's license must be marked "commercial driver's license", and must be, to the maximum extent practicable, tamper proof. It must include the following information:
 - a. The name and residential address of the person;
 - b. The person's color photograph;
 - c. A physical description of the person, including sex, height, weight, and eye and hair color;
 - d. Date of birth;
 - e. The person's social security number;
 - f. The person's signature;
 - g. The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions;
 - h. The name of this state; and
 - i. The dates between which the license is valid.
2. Classifications, endorsements, and restrictions. Commercial drivers' licenses may be issued with the following classifications, endorsements, and restrictions; the holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued, and all lesser classes of vehicles except motorcycles. Vehicles for which an endorsement is required may not be driven unless the proper endorsement appears on the license. The requirements of placarding vehicles transporting hazardous materials under subparagraph (b) of paragraph (3) of subdivision a and the endorsement required under paragraph (1) of subdivision b do not apply to a person who is the operator of a farm vehicle, provided such vehicle is controlled and operated by a farmer and used to transport hazardous materials in the form of farm supplies within one hundred fifty miles [241.40 kilometers] of the farm, and not used in the operations of a common or contract carrier.
 - a. Classifications:
 - (1) Class A. Any combination of vehicles with a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms], provided the gross vehicle weight rating of the vehicles being towed is in excess of ten thousand pounds [4535.92 kilograms].
 - (2) Class B. Any single vehicle with a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms], and any such vehicle towing a vehicle not in excess of ten thousand pounds [4535.92 kilograms].
 - (3) Class C. Any single vehicle with a gross vehicle weight rating of twenty-six thousand pounds [11793.40 kilograms]

or less or any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand pounds [4535.92 kilograms] comprising:

- (a) Vehicles designed to transport sixteen or more passengers, including the driver; and
- (b) Vehicles used in the transportation of hazardous materials which requires the vehicle to be placarded under 49 CFR part 172, subpart F.

b. Endorsements and restrictions.

- (1) "H" - authorizes the driver to drive a vehicle transporting hazardous materials.
- (2) "T" - authorizes driving double and triple trailers.
- (3) "P" - authorizes driving vehicles carrying passengers.
- (4) "N" - authorizes driving tank vehicles.
- (5) "X" - combinations of tank vehicles and hazardous material vehicles.

Other restrictions may be placed upon a commercial driver's license, as provided in section 39-06-17. The applicant shall pay a fee of three dollars for each endorsement.

- 3. Applicant record check. Before issuing a commercial driver's license, the commissioner shall obtain driving record information through the commercial driver's license information system, the national driver's register, and from each state in which the person has been licensed.
- 4. Notification of license issuance. Within ten days after issuing a commercial driver's license, the commissioner shall notify the commercial driver's license information system of that fact, providing all information required to ensure identification of the person.
- 5. Expiration of license. A commercial driver's license issued under this chapter expires in the manner provided for operator's licenses under section 39-06-19.
- 6. License renewal procedures. Every person applying for renewal of a commercial driver's license must complete the application form required by subsection 1 of section 39-06.2-08, providing updated information and required certifications. If the applicant wishes to retain a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed.

39-06.2-10. Disqualification and cancellation.

- 1. Disqualification offenses. Any person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:

- a. Driving a commercial motor vehicle under the influence of alcohol or drugs;
- b. Leaving the scene of an accident involving a commercial motor vehicle driven by the person in violation of section 39-08-04, 39-08-05, 39-08-07, or 39-08-09;
- c. Using a commercial motor vehicle in the commission of any felony as defined in this chapter; or
- d. Refusal to submit to a test to determine the driver's alcohol concentration while driving a commercial motor vehicle.

If any of the above violations occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

2. A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection 1, or any combination of those offenses, arising from two or more separate incidents. Only offenses committed after the effective date of this chapter may be considered in applying this subsection.
3. The commissioner may adopt rules under section 39-06.2-14, establishing guidelines, including conditions, under which a disqualification for life under subsection 2 may be reduced to a period of not less than ten years.
4. A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.
5. A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.
6. Notice and hearing. Prior to suspending, revoking, or disqualifying a driver under this section, the commissioner must provide the driver with notice of opportunity for hearing, in accordance with section 39-06-33, and the hearing requested must be held in accordance with section 39-06-33.
7. After suspending, revoking, or canceling a commercial driver's license, the commissioner shall update the commissioner's records to reflect that action within ten days. After suspending, revoking, or canceling a nonresident commercial driver's privileges, the commissioner shall notify the licensing authority of the state that issued the commercial driver's license or commercial driver's instruction permit within ten days.

39-06.2-11. The commissioner may issue a class D driver's license to a driver suspended, revoked, or disqualified under this chapter when:

1. The suspension, revocation, or disqualification arises from a violation under this chapter which would not require similar sanctions under chapter 39-06 or 39-06.1.
2. The period of suspension, revocation, or disqualification imposed for a violation under this chapter is greater than that which could have been imposed under chapter 39-06 or 39-06.1 for the same violation, and the period of suspension or revocation provided for under chapter 39-06 or 39-06.1 has been satisfied under the existing suspension or revocation.

39-06.2-12. Notification of traffic convictions. Within ten days after receiving a report of the conviction of any nonresident holder of a commercial driver's license for any violation of state or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle, the commissioner shall notify the driver's licensing authority in the licensing state of the conviction.

39-06.2-13. Driving record information to be furnished. Notwithstanding any other provision of law, the commissioner shall furnish full information regarding the driving record of any person:

1. To the driver's license administrator of any other state or of a province or territory of Canada, requesting that information;
2. To any employer or prospective employer upon request and payment of a fee of three dollars;
3. To insurers upon request and payment of a fee of three dollars.

39-06.2-14. Rulemaking authority. The commissioner may, pursuant to chapter 28-32, adopt any rules necessary to carry out the provisions of this chapter.

39-06.2-15. Authority to enter agreements. The commissioner may enter into or make agreements, arrangements, or declarations to carry out the provisions of this chapter.

39-06.2-16. Reciprocity.

1. Notwithstanding any other provision of law, a person may drive a commercial motor vehicle in this state if the person has a valid commercial driver's license or commercial driver's license instruction permit issued by any state, or province or territory of Canada, in accordance with the minimum federal standards for the issuance of a commercial motor vehicle driver's license, if the person's license or permit is not suspended, revoked, or canceled, and if the person is not disqualified from driving a commercial motor vehicle.
2. The commissioner must give all out-of-state convictions full faith and credit and treat them for sanctioning purposes under this chapter as if they occurred in this state. Certified copies of the records of the other state's driver's licensing authority are sufficient evidence of the conviction.

SECTION 5. AMENDMENT. Subsections 1, 2, 3, and 4 of section 39-20-07 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. A person having, at that time, ~~a blood~~ an alcohol concentration of not more than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor.
2. Evidence that there was at that time more than five one-hundredths of one percent by weight ~~of alcohol concentration in the person's blood~~ a person is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of intoxicating liquor.
3. A person having ~~a blood~~ an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after driving or being in physical control of a vehicle is under the influence of intoxicating liquor at the time of driving or being in physical control of a vehicle.
4. ~~Percent by weight of alcohol in the blood or blood alcohol~~ Alcohol concentration is based upon grams of alcohol per one hundred cubic centimeters of blood or grams of alcohol per two hundred ten liters of alveolar air or grams of alcohol per sixty-seven cubic centimeters of urine.

SECTION 6. EFFECTIVE DATE - APPLICATION. This Act becomes effective July 1, 1989. Any valid driver's license need not be replaced by a commercial driver's license or other license designated in this Act, until it expires.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 462

HOUSE BILL NO. 1174
(Committee on Transportation)
(At the request of the Highway Department)

OPERATOR'S LICENSES AND INSURANCE

AN ACT to create and enact a new section to chapter 39-16.1 of the North Dakota Century Code, relating to verification of operator's liability insurance; and to amend and reenact section 39-06-34 of the North Dakota Century Code, relating to the immediate suspension of licenses of drivers constituting a threat to the motoring public.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-34. Commissioner may require reexamination. In addition to other powers set forth in this chapter, the commissioner, having good cause to believe that a licensed operator is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee require him the licensee to submit to such physical, mental, or driver's examination as may be deemed necessary. If the commissioner has good cause to believe that the licensed operator presents an immediate danger to the motoring public, the commissioner may immediately, and without prior notice, suspend the operator's license pending the examination. The notice of suspension must provide the operator with the opportunity for a hearing within five days of the receipt of the notice of suspension. When a hearing is requested it must be conducted under section 39-06-33 and the decision must be rendered within two days of the conclusion of the hearing. Upon the conclusion of such examination the commissioner shall take action as may be appropriate and may suspend or revoke the license of such person or permit him the licensee to retain his the license, or may issue a license subject to restrictions as permitted under section 39-06-17. Refusal or neglect of the licensee to submit to such examination shall be ground for suspension or revocation of his the license.

SECTION 2. A new section to chapter 39-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Verification of liability insurance. No operator's license may be returned to an individual unless that person files with the commissioner a verified statement confirming the person's insurance coverages as required by section 39-08-20. The verified statement must include the name of the insurance carrier and the effective dates of the policy. Upon the request of the commissioner, the insurance carrier will verify the information contained in the verified statement. The commissioner shall suspend the operator's license of any person upon receiving satisfactory evidence that the verified statement contains false or fraudulent information. The period of suspension may not exceed six months. Any suspension must be initiated under section 39-06-33. An operator whose license is suspended under this section is not eligible for a temporary operator's permit.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 463

HOUSE BILL NO. 1053
(Legislative Council)
(Interim Judiciary Committee)

MOTOR VEHICLE EQUIPMENT OFFENSES

AN ACT to create and enact two new paragraphs to subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to penalty point assessments for motor vehicle equipment violations; to amend and reenact sections 39-06.1-05, 39-06.1-09, paragraph 9 of subdivision a of subsection 3 of section 39-06.1-10, sections 39-07-09 and 39-21-09, and subsection 1 of section 39-21-46 of the North Dakota Century Code, relating to the disposition of traffic offenses, traffic offenses for which a person may be released upon a promise to appear, penalty point assessments, and motor vehicle equipment violations; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06.1-05. Offenses excepted. The procedures authorized under sections 39-06.1-02 and 39-06.1-03 may not be utilized by a person charged with one of the following offenses:

1. Driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance.
2. Reckless driving or aggravated reckless driving in violation of section 39-08-03, or an equivalent ordinance.
3. A violation of chapter 12.1-16 resulting from the operation of a motor vehicle.
4. Leaving the scene of an accident in violation of section 39-08-04, 39-08-05, 39-08-07, or 39-08-08, or equivalent ordinances.
5. Driving while license or driving privilege is suspended or revoked in violation of section 39-06-42, or an equivalent ordinance.
6. Violating subdivision b or c of subsection 5 of section 39-24-09.
7. Operating a modified motor vehicle in violation of section 39-21-45.1.
8. Driving without liability insurance in violation of section 39-08-20.

9. Failing to display a placard or flag, in violation of any rule implementing section 39-21-44, while transporting explosive or hazardous materials.
10. Operating an unsafe vehicle in violation of subsection 1 of section 39-21-46.

SECTION 2. AMENDMENT. Section 39-06.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06.1-09. "Moving violation" defined. For the purposes of sections 39-06.1-06 and 39-06.1-13, a "moving violation" means a violation of section 39-04-22; subsection 1 of section 39-04-37; section 39-04-55; 39-06-01; 39-06-14; 39-06-16; 39-09-04.1; 39-09-09; 39-12-04; 39-12-05; 39-12-06; 39-12-09; 39-24-02; or 39-24-09, except subdivisions b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of chapter 39-10, 39-10.2, or 39-21, or equivalent ordinances, except sections 39-21-44, 39-21-45.1, 39-21-46, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

SECTION 3. AMENDMENT. Paragraph 9 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- (9) Except as provided in section sections 39-21-44 and 39-21-45.1, knowingly drove with defective, nonexistent, or unlawful equipment in violation of subsection 1 of section 39-21-46, or equivalent ordinances 2 points

SECTION 4. Two new paragraphs to subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code are hereby created and enacted to read as follows:

Knowingly failing to display a placard or flag, in violation of any rule implementing section 39-21-44, while transporting explosive or hazardous materials 2 points

Except as provided in paragraph 9 of subdivision a of this subsection, knowingly operating an unsafe vehicle in violation of subsection 1 of section 39-21-46 2 points

SECTION 5. AMENDMENT. Section 39-07-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-07-09. Offenses under which person halted may not be entitled to release upon promise to appear. Section 39-07-07 does not apply to a person if:

1. The halting officer has good reason to believe the person guilty of any felony or if the person is halted and charged with an offense listed in section 39-06.1-05 but not listed in subsection 2; or
2. The halting officer, acting within the officer's discretion, determines that it is inadvisable to release the person upon a promise to appear and if the person has been halted and charged with any of the following offenses:
 - a. Reckless driving.
 - b. Driving in excess of speed limitations established by the state or by local authorities in their respective jurisdictions.
 - c. Driving while license or driving privilege is suspended or revoked for violation of section 39-06-42, or an equivalent ordinance.
 - d. Operating a modified vehicle.
 - e. Driving without liability insurance in violation of section 39-08-20.
 - f. Failing to display a placard or flag, in violation of any rule implementing section 39-21-44, while transporting explosive or hazardous materials.
 - g. Operating an unsafe vehicle in violation of subsection 1 of section 39-21-46.

The halting officer forthwith shall take any person not released upon a promise to appear before the nearest or most accessible magistrate.

SECTION 6. AMENDMENT. Section 39-21-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-21-09. Color of clearance lamps, side marker lamps, backup lamps, and reflectors.

1. Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle must display or reflect an amber color.
2. Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle must display or reflect a red color.
3. All lighting devices and reflectors mounted on the rear of any vehicle must display or reflect a red color, except that the light illuminating the license plate must be white and the light emitted by a backup lamp must be white or amber.
4. Any person who violates this section must be assessed a fee of ten dollars for each offense.

SECTION 7. AMENDMENT. Subsection 1 of section 39-21-46 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. It is unlawful for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which the actor knows to be in such unsafe condition as to endanger any person, or which the actor knows does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this chapter, or which the actor knows is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter. ~~Any person who violates any of the provisions of section 39-21-08, 39-21-09, 39-21-10, or 39-21-14 must be assessed a fee of ten dollars. Any~~ Unless otherwise specifically provided in this chapter or in section 39-06.1-08 or 39-06.1-09, any person who, in violation of this chapter, drives, or any owner who causes or knowingly permits to be driven upon a highway, any vehicle or combination of vehicles which that person knows is unsafe or improperly equipped is guilty of an infraction.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 464

SENATE BILL NO. 2316

Senators Redlin, Wogsland, Nalewaja)
(Representatives Rydell, Scherber)

SEATBELTS

AN ACT to create and enact a new subsection to section 39-06.1-06 and a new section to chapter 39-21 of the North Dakota Century Code, relating to the required use of safety belts in certain motor vehicles; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 39-06.1-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

For a violation of section 2 of this Act, a fee not to exceed twenty dollars.

SECTION 2. A new section to chapter 39-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Use of safety belts required in certain motor vehicles - Enforcement. Except as otherwise provided in this Act, no driver may operate a motor vehicle designed for carrying fewer than eleven passengers, which was originally manufactured with safety belts, upon a highway, unless each front seat occupant is wearing a properly adjusted and fastened safety belt. This section does not apply to the driver of a vehicle in which all remaining front seat safety belts are in use by other front seat occupants of the vehicle, to a child in a child restraint or seatbelt in accordance with section 39-21-41.2, to drivers of implements of husbandry, or to rural mail carriers while on duty delivering mail. From the effective date of this Act until December 31, 1990, only warning tickets may be issued for a violation of this section.

Approved April 11, 1989
Filed April 12, 1989

CHAPTER 465

SENATE BILL NO. 2374
(Senators D. Meyer, Robinson)
(Representatives Murphy, Tomac)

DUI LICENSE RESTRICTIONS

AN ACT to amend and reenact subsection 2 of section 39-06.1-11 of the North Dakota Century Code, relating to temporary restricted licenses and ignition interlock devices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-06.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If the licensing authority has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, the authority may, in accordance with this section, for good cause, and upon written application of the offender, issue a temporary restricted license which takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01 or chapter 39-20. The licensing authority may not issue a temporary restricted license to any offender whose operator's license is under suspension upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued for good cause if no offenses have been committed for a period of two years before the date of the filing of a written application accompanied by a report from an addiction facility. The commissioner may conduct a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior for the two-year period. The commissioner may also require that an ignition interlock device be installed in the offender's vehicle. The licensing authority may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17, section 39-06-31, subsection 3.1 of section 39-06.1-10, or section 39-20-04, or imposed for an alcohol-related offense under section 39-06-43. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct, but no temporary restricted license may be issued for suspensions ordered under subsection 4 of section 39-06-32.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 466

SENATE BILL NO. 2502
(Senators Freborg, Naaden)
(Representatives Melby, O. Hanson, Myrdal)

REPEAT ALCOHOL TRAFFIC OFFENDER SANCTIONS

AN ACT to create and enact a new section to chapter 39-08 of the North Dakota Century Code, relating to the installation of ignition interlock devices, and the seizure, forfeiture, and sale of motor vehicles for alcohol-related traffic offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Alcohol-related traffic offenses - Ignition interlock devices and the seizure, forfeiture, and sale of motor vehicles. A motor vehicle owned and operated by a person upon a highway or upon public or private areas to which the public has a right of access for vehicular use may be seized, forfeited, and sold or otherwise disposed of pursuant to an order of the court at the time of sentencing if the person is in violation of section 39-08-01 or an equivalent ordinance and has been convicted of violating section 39-08-01 or an equivalent ordinance at least three times within the five years preceding the violation. The court may also require that an ignition interlock device be installed in the person's vehicle for a period of time that the court deems appropriate.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 467

HOUSE BILL NO. 1654
(Representatives Oban, Soukup)
(Senator Krebsbach)

ALCOHOL IN A PUBLIC CONVEYANCE

AN ACT to amend and reenact section 39-08-18 of the North Dakota Century Code, relating to the open bottle law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-08-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-08-18. Open bottle law - Penalty. ~~No~~

1. A person may not drink or consume alcoholic beverages, as defined in section 5-01-01, in or on any motor vehicle when ~~such~~ the vehicle is upon a public highway or in an area used principally for public parking. ~~No~~ A person may not have in his possession on his person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing ~~such~~ alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. It is unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway or in an area used principally for public parking any bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle is kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment must be deemed to be within the area occupied by the driver and passengers. ~~The provisions of this section do~~ This subsection does not prohibit the consumption or possession of alcoholic beverages in a house car, as defined by subsection 25 of section 39-01-01, if the consumption or possession occurs in the area of the house car used as sleeping or living quarters and that area is separated from the driving compartment by a solid partition, door, curtain, or some similar means of separation; however, consumption is not authorized while the house car is in motion. Any person violating ~~the provisions of this section~~ subsection must be assessed a fee of fifty dollars; however, the licensing authority may not record the violation against the person's driving record ~~of such person~~ unless ~~he~~ the person was the driver of the ~~automobile~~ motor vehicle at the time that the violation occurred.

2. Subsection 1 does not apply to a public conveyance that has been commercially chartered for group use, any passenger for compensation in a for hire motor vehicle, or a privately owned motor vehicle operated by a person in the course of that person's usual employment transporting passengers at the employer's direction. This subsection does not authorize possession or consumption of an alcoholic beverage by the operator of any motor vehicle described in this subsection while upon a public highway or in an area used principally for public parking.

Approved March 29, 1989

Filed March 30, 1989

CHAPTER 468

HOUSE BILL NO. 1242

(Marks, L. Hanson, Gorman, J. DeMers, Belter)

DRIVING WITHOUT LIABILITY INSURANCE

AN ACT to amend and reenact section 39-08-20 of the North Dakota Century Code, relating to driving without liability insurance; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-08-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-08-20. Driving without liability insurance prohibited - Penalty. A person may not drive a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by chapter 39-16.1. Upon being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law or during the investigation of an accident, the person driving the motor vehicle shall provide to the officer upon request satisfactory evidence of the policy required under this section. If unable to comply with the request, that person may not be charged with a violation of this section if that person submits such evidence to the officer or the officer's agency within twenty days of the date of the request. Violation of this section is a class B misdemeanor and the sentence imposed must include a fine of at least one hundred fifty dollars.

Approved March 14, 1989

Filed March 15, 1989

CHAPTER 469

SENATE BILL NO. 2378
(Senators Stromme, Nelson)
(Representatives Kaldor, Graba)

LOCAL SPEED LIMIT ALTERATION

AN ACT to amend and reenact subsection 1 of section 39-09-03 of the North Dakota Century Code, relating to alteration of speed limits by local authorities; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-09-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Whenever local authorities in their respective jurisdictions, on the basis of an engineering and traffic investigation, determine that the maximum speed permitted under this title is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit thereon which:
 - a. Decreases the limit at intersections;
 - b. Increases the limit within an urban district but not to more than fifty-five miles [88.51 kilometers] per hour; or
 - c. Decreases the limit outside an urban district, ~~but not to less than thirty-five miles [56.33 kilometers] per hour.~~

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 470

SENATE BILL NO. 2292
(Senator Nalewaja)
(Representatives R. Berg, Bernstein)

HAZARDOUS CONDITION ROAD CLOSING

AN ACT to amend and reenact section 39-10-21.1 of the North Dakota Century Code, relating to closing roads because of hazardous conditions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-10-21.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-10-21.1. Closing road because of hazardous conditions - Posting of official traffic-control devices - Entering closed road prohibited. The highway patrol or local law enforcement authorities having jurisdiction over a road may close a road temporarily due to hazardous conditions ~~if that closing is necessary~~ for the protection and safety of the public. If such a closing is made, the authority ordering the closing shall make every reasonable attempt to notify the public and, ~~conditions permitting when practical, may~~ post appropriate official traffic-control devices to advise motorists of the closing. ~~Each operator of~~ No person, while operating a motor vehicle shall obey the traffic control device, may knowingly enter a road closed under this section.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 471

HOUSE BILL NO. 1631
(Gerntholz, V. Olson, Halmrast)

SCHOOLBUSES AND RAILROAD CROSSINGS

AN ACT to create and enact a new subsection to section 39-10-46 of the North Dakota Century Code, relating to signs on schoolbuses that stop at railroad crossings; and to amend and reenact subsection 1 of section 39-10-43 of the North Dakota Century Code, relating to vehicles required to stop at railroad crossings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-10-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The driver of a bus carrying passengers, or of any schoolbus ~~carrying any schoolchild~~, or of any vehicle carrying any chlorine, empty or loaded cargo tank vehicles used to transport dangerous articles or any liquid having a flashpoint below two hundred degrees Fahrenheit [93.33 degrees Celsius], cargo tank vehicles transporting a commodity having a temperature above its flashpoint at the time of loading, certain cargo tank vehicles transporting commodities under special permits issued by the hazardous materials regulations board, and every motor vehicle which must have the following placards: "explosives", "poison", "flammable oxidizers", "compressed gas", "corrosives", "flammable gas", "radioactive", or "dangerous", before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet [15.24 meters] but not less than fifteen feet [4.57 meters] from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train and may not proceed until ~~he~~ the driver can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for manually changing gears while traversing such crossing and the driver may not manually shift gears while crossing the track or tracks.

SECTION 2. A new subsection to section 39-10-46 of the North Dakota Century Code is hereby created and enacted to read as follows:

Every schoolbus must bear on the rear of the bus a plainly visible sign containing the words "THIS SCHOOLBUS STOPS AT ALL RAILROAD CROSSINGS."

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 472

SENATE BILL NO. 2437
(Senators O'Connell, Tennefos, Hilken)
(Representatives Timm, Smette, Gilmore)

HIGHWAY VEHICLE SIZE LIMITS

AN ACT to amend and reenact subdivision b of subsection 1, subdivision b of subsection 2, and subdivision f of subsection 3 of section 39-12-04 of the North Dakota Century Code, relating to width and height exemptions for implements of husbandry and length limitations for towed vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 1 of section 39-12-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- b. Implements of husbandry being moved by resident farmers, ranchers, or dealers, or manufacturers between sunrise and sunset. Furthermore, the limitation does not apply to implements of husbandry being moved between sunset and sunrise by resident farmers, ranchers, or dealers, or manufacturers on public state, county, or township highway systems other than interstate highway systems.

SECTION 2. AMENDMENT. Subdivision b of subsection 2 of section 39-12-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- b. The limitation in subdivision a does not apply to vehicles that are at most fifteen feet six inches [4.72 meters] high when all of the following apply:
- (1) The vehicle is an implement of husbandry and is being moved by a resident farmer, rancher, or dealer, or manufacturer.
 - (2) The trip is at most forty miles [64.40 kilometers].
 - (3) The trip is between sunrise and sunset.
 - (4) None of the trip is on an interstate highway.

SECTION 3. AMENDMENT. Subdivision f of subsection 3 of section 39-12-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- f. The length of a trailer or semitrailer, including the load thereon, may not exceed fifty-three feet [16.15 meters] except that trailers and semitrailers titled and registered in North Dakota prior to July 1, 1987, and towed vehicles may not exceed a length of sixty feet [18.29 meters].

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 473

HOUSE BILL NO. 1351
(Representatives Frey, Dorso)
(Senator Hilken)

DRIVER'S RECORD ABSTRACTS

AN ACT to amend and reenact section 39-16-03 of the North Dakota Century Code, relating to driver's record abstracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 39-16-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16-03. Abstract - Not admissible in evidence - Fee. The commissioner upon request shall furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter which must include the convictions, adjudications, and admissions of commission of traffic offenses of any driver and suspensions, revocations, and restrictions of a person's driving privileges. Any person, except law enforcement or judicial officers functioning in their official capacity, requesting the abstract shall indicate in writing the reason for the request and shall identify the person or firm for whom or which the request is made and the intended recipient of the abstract.

Copies of abstracts are not admissible as evidence in any civil or criminal trial arising out of a motor vehicle accident.

A fee of two dollars must be paid for each abstract of any operating record. The commissioner shall send an additional copy of the abstract to the driver whose abstract was requested, accompanied by a statement identifying the person making the request, identifying the person or firm for whom or which the request is made, identifying the intended recipient of the abstract, and providing the reason for the request. No abstract or statement may be sent to a driver where the request for the driver's abstract was made by the federal bureau of investigation or the United States central intelligence agency, or their agents, or by any law enforcement agency of this state, or of its political subdivisions.

Approved April 13, 1989
Filed April 13, 1989

* NOTE: Section 39-16-03 was also amended by section 6 of House Bill No. 1172, chapter 460.

CHAPTER 474

HOUSE BILL NO. 1176
(Committee on Transportation)
(At the request of the Highway Department)

BANKRUPTCY EFFECT ON MOTOR VEHICLE FINANCIAL REQUIREMENTS

AN ACT to amend and reenact section 39-16.1-04 of the North Dakota Century Code, relating to bankruptcy not relieving a judgment debtor for motor vehicle financial requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-16.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-16.1-04. Suspension of license - Temporary release.

1. The commissioner, upon receipt of a certified copy of a judgment or a certified copy of the docket entries in an action resulting in a judgment for damages or a certificate of facts relative to a judgment on a form provided by the commissioner, shall forthwith suspend the license or operating privilege, of any person against whom such judgment was rendered except as hereinafter otherwise provided in this section and in section 39-16.1-06.
2. If the judgment creditor consents in writing, in such form as the commissioner may prescribe that the judgment debtor be allowed license or nonresident's operating privilege, the same may be allowed by the commissioner, in his discretion, for six months from the date of such consent and thereafter until such consent is revoked in writing, notwithstanding default in the payment of such judgment, or of any installments thereof prescribed in section 39-16.1-06 provided the judgment debtor furnishes proof of financial responsibility.
3. Any person whose license or nonresident's operating privilege has been suspended or is about to be suspended or will become subject to suspension under this chapter may be relieved from the effect of the judgment as prescribed in this chapter by filing with the commissioner an affidavit stating that at the time of the accident upon which the judgment has been rendered the affiant was insured, that the insurer is liable to pay the judgment, and the reason, if known, why the insurer has not paid the judgment. That person shall also file the original or a copy of the insurance policy, if available, and any other documents the commissioner may require to show that the loss, injury, or damage for which the judgment was rendered, was covered by the insurance policy. If the commissioner is satisfied from such papers that the insurer was authorized to issue the insurance policy at the time and place of issuing the policy and that the insurer is liable to pay the judgment, at least

to the extent and for the amounts required in this chapter, the commissioner may not suspend the license or nonresident's operating privilege, or if already suspended shall reinstate them.

4. A license or nonresident's operating privilege must remain suspended and may not be renewed, nor may any such license be thereafter issued in the name of such person, including any such person not previously licensed, unless and until every such judgment is satisfied in full or to the extent hereinafter provided and until the said person gives proof of financial responsibility subject to the exemptions stated in sections 39-16.1-04 and 39-16.1-06.
5. ~~A discharge in bankruptcy following the rendering of any such judgment does not relieve the judgment debtor from any of the requirements of this chapter.~~

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 475

HOUSE BILL NO. 1331
(Representatives Tollefson, Skjervén)
(Senators Mutch, Krebsbach)

LPG TRANSPORTERS FINANCIAL RESPONSIBILITY

AN ACT to create and enact chapter 39-16.2 of the North Dakota Century Code, relating to financial responsibility requirements for liquified petroleum gas transporters; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 39-16.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

39-16.2-01. Definitions. As used in this chapter:

1. "Dealer" means any person in the business of handling liquified petroleum gas who delivers or sells any liquified petroleum gas to any retail dealer or user of liquified petroleum gas.
2. "Liquified petroleum gas" includes any material that is composed predominantly of any of the following hydrocarbons or mixtures of the following hydrocarbons: propane, propylene, butanes (normal butane and isobutane), and butylenes.

39-16.2-02. Liquified petroleum gas transporters - Financial responsibility requirements. A dealer who owns or operates a vehicle used for the transportation of liquified petroleum gas shall maintain motor vehicle liability insurance of:

1. At least five million dollars for the transportation of liquified petroleum gas transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities of three thousand five hundred water gallons [13248.94 liters] or more;
2. At least one million dollars for the transportation of liquified petroleum gas transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities of less than three thousand five hundred water gallons [13248.94 liters].

39-16.2-03. Maintenance and certification of financial requirements - Verification. A dealer subject to the financial responsibility requirements of this chapter shall maintain the liability insurance prescribed in section 39-16.2-02 which obligates the dealer to pay compensation for injuries to persons and for loss or damage to property by reason of the ownership, maintenance, or use of the covered vehicle. The commissioner may require dealers subject to the financial responsibility requirements of this chapter to certify the existence of financial responsibility in the form and at the times required by the commissioner. The commissioner may forward the

certification to the named insurer to determine if the certification is correct. No civil liability may accrue to the insurer or any of its employees for reports made to the commissioner if the reports are made in good faith based upon the most recent information to the insurer.

39-16.2-04. Self-insurance. The commissioner may allow a dealer to fully or partially self-insure motor vehicles as required by this chapter if the dealer provides financial data the commissioner requires and the commissioner determines that the financial data demonstrates that the dealer is sufficiently stable and solvent to fully or partially self-insure. The commissioner shall authorize self-insurance subject to reasonable provisions for the filing of periodic financial statements demonstrating no substantial deterioration of financial stability.

39-16.2-05. Penalties. A dealer subject to the financial responsibility requirements of this chapter who operates or causes to be operated a motor vehicle in this state without meeting the financial responsibility requirements of this chapter is guilty of a class B misdemeanor. A dealer subject to the financial responsibility requirements of this chapter who operates or causes to be operated a motor vehicle in this state without meeting the financial responsibility requirements of this chapter if the vehicle is involved in an accident is guilty of a class A misdemeanor. The department may refuse to issue the registration for a vehicle or may cancel the registration of a vehicle owned or operated by a person who does not comply with the requirements of this chapter.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 476

SENATE BILL NO. 2131
(Committee on Judiciary)
(At the request of the Motor Vehicle Department)

MOBILE HOME AND TRAILER DEALER VIOLATIONS

AN ACT to amend and reenact sections 39-18-07 and 39-22.1-04 of the North Dakota Century Code, relating to penalties for violating mobile home and trailer dealer licensing laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-18-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-18-07. Penalty. Any person who violates the provisions of this chapter is guilty of ~~an infraction~~ a class B misdemeanor.

SECTION 2. AMENDMENT. Section 39-22.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-22.1-04. Penalty. Any person who violates the provisions of this chapter is guilty of ~~an infraction~~ a class B misdemeanor.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 477

SENATE BILL NO. 2128
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

INTERNATIONAL VEHICLE REGISTRATION PLAN

AN ACT to amend and reenact section 39-19-04 of the North Dakota Century Code, relating to the international registration plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-19-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-19-04. International registration plan - Multistate reciprocal agreement - Change of state agency. The North Dakota state highway department, or the designated agency of the department acting directly or through the department, which has joined the international registration plan and multistate reciprocal agreement shall transfer such membership to the department of motor vehicles. The department of motor vehicles is authorized to expend the necessary fees required for membership. The provisions of the international registration plan, including any amendment to the plan, as agreed to by the department, are applicable to those vehicles engaged in interstate travel which are apportioned in North Dakota. The department may enforce and collect all penalties and fines allowed by the provisions of the international registration plan.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 478

SENATE BILL NO. 2238
(Committee on Judiciary)
(At the request of the Highway Department)

DUI LAW ENFORCEMENT ACTIONS

AN ACT to amend and reenact sections 39-20-01, 39-20-03.1, 39-20-04, and subsection 1 of section 39-20-04.1 of the North Dakota Century Code, relating to juvenile custody under implied consent, taking possession of operators' licenses on arrest for alcohol offenses, and reports on arrest to the highway commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-20-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-01. Implied consent to determine alcoholic and drug content of blood. Any person who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcoholic, other drug, or combination thereof, content of the blood. As used in this chapter the word "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcoholic, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the state toxicologist under this chapter. The test or tests must be administered at the direction of a law enforcement officer only after placing the person, except persons mentioned in section 39-20-03, under arrest and informing that person that the person is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 satisfies the requirement of an arrest. The arresting law enforcement officer shall also inform the person charged that refusal of the person to submit to the test determined appropriate will result in a revocation for up to three years of the person's driving privileges. The arresting law enforcement officer shall determine which of the tests is to be used. When a child is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall diligently attempt to contact the child's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter.

SECTION 2. AMENDMENT. Section 39-20-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-03.1. Action following test result for a resident operator. If a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have a blood alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle, the following procedures apply:

1. The law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the commissioner's official notification to the person of the commissioner's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine sample or by drawing blood as provided in section 39-20-02 and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the state toxicologist and if the analysis shows that person had a blood alcohol concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately take possession of the person's North Dakota operator's license or permit if it is then available and, within twenty-four hours, forward the license and a copy of the temporary operator's permit to the arresting officer law enforcement agency making the arrest or to the commissioner. The law enforcement agency shall also, on taking possession of the person's operator's license, issue to that person a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1. The temporary operator's permit serves as the commissioner's official notification to the person of the commissioner's intent to revoke, suspend, or deny driving privileges in this state.
3. The arresting law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the commissioner a certified written report in the form required by the commissioner and the person's operator's license taken under subsection 1 or 2. If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for blood alcohol concentration under this chapter, and that the results of

the test show that the person had a blood alcohol concentration of at least ten one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the commissioner a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer.

* SECTION 3. AMENDMENT. Section 39-20-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to testing. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the commissioner's official notification to the person of the commissioner's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The commissioner, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the commissioner, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the commissioner shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the commissioner shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the commissioner may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

1. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.

* NOTE: Section 39-20-04 was also amended by section 1 of House Bill No. 1595, chapter 479.

2. Two years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
3. Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.

SECTION 4. AMENDMENT. Subsection 1 of section 39-20-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. After the receipt of a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and the ~~sworn~~ certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having a blood alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the commissioner shall suspend the person's operator's license as follows:
 - a. For ninety-one days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter.
 - b. For three hundred sixty-four days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter.
 - c. For two years if the person's driving record shows that within the five years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 479

HOUSE BILL NO. 1595
(Representatives Tomac, Shaft)
(Senator Maxson)

ALCOHOL SCREENING TEST REFUSAL

AN ACT to amend and reenact section 39-20-04, subsection 1 of section 39-20-05, and section 39-20-14 of the North Dakota Century Code, relating to pleading guilty to avoid a section 39-20-04 revocation, performing a chemical test after refusing a screening test to avoid a section 39-20-04 revocation, and the temporary operator's permit serving notice to driver.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 39-20-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to testing.

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the commissioner's official notification to the person of the commissioner's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The commissioner, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the commissioner, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a

* NOTE: Section 39-20-04 was also amended by section 3 of Senate Bill No. 2238, chapter 478.

resident without a license or a permit to operate a motor vehicle in this state, the commissioner shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the commissioner shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the commissioner may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- ~~1-~~ a. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - ~~2-~~ b. Two years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - ~~3-~~ c. Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. A person's driving privileges are not subject to revocation under this section if all of the following criteria are met:
- a. No administrative hearing request is made under section 39-20-05;
 - b. The person mails an affidavit to the commissioner within ten days after the temporary operator's permit is issued. The affidavit must state that the person:
 - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
 - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and

- (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn.
- c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
- d. The court accepts the person's guilty plea and a notice of that fact is mailed to the commissioner within twenty-five days after the temporary operator's permit is issued; and
- e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the commissioner prior to the return or reinstatement of the person's driving privileges.
3. The court must mail a copy of an order granting a withdrawal of a guilty plea to violating section 39-08-01, or equivalent ordinance, to the commissioner within ten days after it is ordered. Upon receipt of the order, the commissioner shall immediately revoke the person's driving privileges as provided under this section without providing an administrative hearing.

SECTION 2. AMENDMENT. Subsection 1 of section 39-20-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or 39-20-04.1, the commissioner shall afford that person an opportunity for a hearing if the person mails a request for the hearing to the commissioner within ten days after the date of issuance of the temporary operator's permit. The hearing must be held within twenty-five days after the date of issuance of the temporary operator's permit, but the hearing officer may extend the hearing to within thirty-five days after the issuance of the temporary operator's permit if good cause is shown. If the hearing date is extended beyond twenty-five days from the issuance of the temporary operator's permit, the commissioner shall provide extended temporary operator's privileges to the date of the hearing. If no hearing is requested within the time limits in this section, and no affidavit is submitted within the time limits under subsection 2 of section 39-20-04, the expiration of the temporary operator's permit serves as the commissioner's official notification to the person of the revocation, suspension, or denial of driving privileges in this state.

SECTION 3. AMENDMENT. Section 39-20-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-14. Screening tests. Any person who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the person's breath for the purpose of estimating the alcohol content of the person's blood upon the

request of a law enforcement officer who has reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol. A person may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of the person's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests must be performed by an enforcement officer certified as a chemical test operator by the state toxicologist and according to methods and with devices approved by the state toxicologist. The results of such screening test must be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. The officer shall inform the person that refusal of the person to submit to a screening test will result in a revocation for up to three years of that person's driving privileges. If such person refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such person's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available. However, the commissioner must not revoke a person's driving privileges for refusing to submit to a screening test requested under this section if the person provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a person certified by the state toxicologist as qualified to perform analysis for alcohol in a person's blood, breath, saliva, or urine.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 480

HOUSE BILL NO. 1657
(O'Shea, Ness, Ring)

TINTING OR COVERING VEHICLE WINDOWS

AN ACT to amend and reenact section 39-21-39 of the North Dakota Century Code, relating to restrictions on tinted windows and objects or material placed on automobile windows.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 39-21-39 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-21-39. Windshield - Must be unobstructed and equipped with wipers - Tinted windows.

1. Every motor vehicle must be equipped with a windshield. No person may drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows which obstructs the driver's clear view of the highway or any intersecting highway.
2. The windshield on every motor vehicle must be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which must be so constructed as to be controlled or operated by the driver of the vehicle.
3. Every windshield wiper upon a motor vehicle must be maintained in good working order.
4. A person may not operate a motor vehicle with any object or any, material, or tinting displayed, affixed, or applied on the front windshield or on any side window where that material alters the color or reduces the light transmittance, or reduces the clear and unobstructed view through the windshield or window. This subsection does not apply to windows behind the driver or to tinted windows or windshields in compliance with the federal motor vehicle safety standards No. 205 unless the object, material, or tinting in conjunction with the window or windshield upon which it is displayed, affixed, or applied has a light transmittance of at least seventy percent. This subsection does not apply to windows behind the operator if the motor vehicle is equipped with outside mirrors on both sides that meet the requirements of section 39-21-38, nor to front side windows displaying transparent sunscreening material as authorized by competent medical authority.

Approved April 10, 1989
Filed April 11, 1989

* NOTE: Section 39-21-39 was also amended by section 1 of Senate Bill No. 2347, chapter 481, and section 1 of House Bill No. 1253, chapter 482.

CHAPTER 481

SENATE BILL NO. 2347
(Heinrich)

MOTOR VEHICLE WINDOW SUNSCREENING

AN ACT to amend and reenact section 39-21-39 of the North Dakota Century Code, relating to tinted windows and suncreening devices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

*SECTION 1. AMENDMENT. Section 39-21-39 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-21-39. Windshield - Must be unobstructed and equipped with wipers - Tinted or screened windows.

1. Every motor vehicle must be equipped with a windshield. No person may drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows which obstructs the driver's clear view of the highway or any intersecting highway.
2. The windshield on every motor vehicle must be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which must be so constructed as to be controlled or operated by the driver of the vehicle.
3. Every windshield wiper upon a motor vehicle must be maintained in good working order.
4. A person may not operate a motor vehicle with any object or any material displayed, affixed, or applied on the front windshield or on any side window where that material alters the color or reduces the light transmittance, or reduces the clear and unobstructed view through the windshield or window. This subsection does not apply to windows behind the driver or to tinted windows ~~or~~, windshields, or suncreening devices in compliance with the federal motor vehicle safety standards No. 205.

Approved April 12, 1989
Filed April 13, 1989

* NOTE: Section 39-21-39 was also amended by section 1 of House Bill No. 1253, chapter 482, and section 1 of House Bill No. 1657, chapter 480.

CHAPTER 482

HOUSE BILL NO. 1253
(Representatives A. Olson, D. Olsen, Shide)
(Senator Vosper)

WINDSHIELD TINTING

AN ACT to amend and reenact section 39-21-39 of the North Dakota Century Code, relating to an exemption for tinted windshield restrictions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 39-21-39 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-21-39. Windshield - Must be unobstructed and equipped with wipers - Tinted windows.

1. Every motor vehicle must be equipped with a windshield. No person may drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows which obstructs the driver's clear view of the highway or any intersecting highway.
2. The windshield on every motor vehicle must be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which must be so constructed as to be controlled or operated by the driver of the vehicle.
3. Every windshield wiper upon a motor vehicle must be maintained in good working order.
4. A person may not operate a motor vehicle with any object or any material displayed, affixed, or applied on the front windshield or on any side window where that material alters the color or reduces the light transmittance, or reduces the clear and unobstructed view through the windshield or window. This subsection does not apply to windows behind the driver, to front side windows displaying transparent sunscreening material as authorized by competent medical authority, or to tinted windows or windshields in compliance with the federal motor vehicle safety standards No. 205.

Approved March 14, 1989
Filed March 15, 1989

* NOTE: Section 39-21-39 was also amended by section 1 of House Bill No. 1657, chapter 480, and section 1 of Senate Bill No. 2347, chapter 481.

CHAPTER 483

HOUSE BILL NO. 1575
(Kolbo)

MOTOR VEHICLE DEALER BONDS

AN ACT to amend and reenact section 39-22-05 of the North Dakota Century Code, relating to motor vehicle dealer bonds; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-22-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-22-05. Bond required. Before the issuance of a motor vehicle dealer's license, as provided by law, the applicant for ~~such a~~ the license shall furnish a surety bond executed by the applicant as principal and executed by a surety company, licensed and qualified to do business within the state of North Dakota, which bond must run to the state of North Dakota, be in the amount of ~~ten~~ twenty-five thousand dollars and be conditioned upon the faithful compliance by ~~said~~ the applicant as a dealer, if the license ~~be~~ is issued to the dealer, that such dealer will comply with all of the statutes of the state of North Dakota, ~~including this chapter,~~ regulating or being applicable to the business of ~~said~~ the dealer as a dealer in motor vehicles, and indemnifying any person dealing or transacting business with ~~said~~ the dealer in connection with any motor vehicle from any loss or damage occasioned by the failure of ~~such~~ the dealer to comply with any of the provisions of this title, ~~including, but not limited to,~~ the furnishing of a proper and valid certificate of title to the motor vehicle involved in any such transaction, and that ~~such~~ the bond shall be filed with the registrar of motor vehicles prior to the issuance of license provided by law. The aggregate liability of the surety of all persons, however, may in no event exceed the amount of ~~said~~ the bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party to ~~any such~~ the proceedings.

SECTION 2. APPLICATION. This Act applies to motor vehicle dealer's licenses issued after December 31, 1989.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 484

SENATE BILL NO. 2435
(Senators Satrom, Lips, Schoenwald)
(Representative Myrdal)

SNOWMOBILE REGISTRATION AND FEES

AN ACT to amend and reenact section 39-24-03 of the North Dakota Century Code, relating to the registration fee for snowmobiles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 39-24-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-24-03. Registration - Application - Issuance - Fees - Renewal. Application for registration must be made to the department in a form as the department shall prescribe and furnish, and must state the name and address of every owner of the snowmobile and be signed by at least one owner. A copy of the application must be carried on the person when operating and shall serve as evidence of registration for a period of not more than thirty days from the date of application.

Upon receipt of the application and the appropriate fee as hereinafter provided, the snowmobile must be registered and a registration number and a certificate of registration assigned. The registration number must be at least ~~two one and one-half~~ inches [~~5.08~~ 3.81 centimeters] in height and of a reflectorized material, and must be securely affixed on each side of the forward half of the snowmobile in such position as to provide clear legibility for identification. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner.

The fee for registration of each snowmobile must be ~~two~~ three dollars for a registration period of two years beginning January first of each even-numbered year effective January 1, 1980. The fee for initial registration of each snowmobile registered on and after January first of the second year of the two-year registration period must also be ~~two~~ three dollars. The fee for a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible may not exceed ~~two~~ three dollars. In addition, in each year that fees are collected for the unsatisfied judgment fund there must be assessed a fee of one dollar per year for each snowmobile registered, which must be placed in the unsatisfied judgment fund. For each snowmobile registered under the provisions of this chapter, there must be assessed a snowmobile trail tax in the amount of ~~six~~ seventeen dollars.

Every owner of a snowmobile shall renew the registration in a manner as the department shall prescribe, upon payment of the same registration fees provided in this section.

* NOTE: Section 39-24-03 was also amended by section 1 of Senate Bill No. 2188, chapter 485.

Upon application for registration as prescribed in this section, any snowmobile dealer as defined in section 39-24-01 must be issued registration numbers distinctively marked as dealer's registration numbers upon payment of the appropriate fee as prescribed in this section. The dealer's registration numbers must be used only on snowmobiles owned by the dealership.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 485

SENATE BILL NO. 2188
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

SNOWMOBILE REGISTRATION NUMBERS

AN ACT to amend and reenact section 39-24-03 of the North Dakota Century Code, relating to snowmobile registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 39-24-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-24-03. Registration - Application - Issuance - Fees - Renewal. Application for registration must be made to the department in a form as the department shall prescribe and furnish, and must state the name and address of every owner of the snowmobile and be signed by at least one owner. A copy of the application must be carried on the person when operating and shall serve as evidence of registration for a period of not more than thirty days from the date of application.

Upon receipt of the application and the appropriate fee as hereinafter provided, the snowmobile must be registered and a registration number and a certificate of registration assigned. The registration number must be at least ~~two one and one-half~~ inches [~~5.00~~ 3.81 centimeters] in height and of a reflectorized material, and must be securely affixed on each side of the forward half of the snowmobile in such position as to provide clear legibility for identification. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner.

The fee for registration of each snowmobile must be two dollars for a registration period of two years beginning January first of each even-numbered year effective January 1, 1980. The fee for initial registration of each snowmobile registered on and after January first of the second year of the two-year registration period must also be two dollars. The fee for a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible may not exceed two dollars. In addition, in each year that fees are collected for the unsatisfied judgment fund there must be assessed a fee of one dollar per year for each snowmobile registered, which must be placed in the unsatisfied judgment fund. For each snowmobile registered under the provisions of this chapter, there must be assessed a snowmobile trail tax in the amount of six dollars.

Every owner of a snowmobile shall renew the registration in a manner as the department shall prescribe, upon payment of the same registration fees provided in this section.

* NOTE: Section 39-24-03 was also amended by section 1 of Senate Bill No. 2435, chapter 484.

Upon application for registration as prescribed in this section, any snowmobile dealer as defined in section 39-24-01 must be issued registration numbers distinctively marked as dealer's registration numbers upon payment of the appropriate fee as prescribed in this section. The dealer's registration numbers must be used only on snowmobiles owned by the dealership.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 486

HOUSE BILL NO. 1144
(Committee on Natural Resources)
(At the request of the North Dakota Parks
and Recreation Department)

SNOWMOBILE FUND USES

AN ACT to amend and reenact section 39-24-05 of the North Dakota Century Code, relating to the disposition of snowmobile registration fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-24-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-24-05. Disposition of registration fees. Fees from registration of snowmobiles must be deposited with the state treasurer and credited to the motor vehicle registrar fund. The snowmobile trail tax must be deposited in a state snowmobile fund in the state treasury. The state parks and recreation department may, upon appropriation by the legislative assembly, expend from such fund moneys it deems necessary for purposes of administering snowmobile safety programs and establishing and maintaining snowmobile facilities.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 487

SENATE BILL NO. 2462
(Senators Heigaard, Lips, Satrom)
(Representatives Wald, Myrdal)

SNOWMOBILE FUND

AN ACT to amend and reenact section 39-24-05 of the North Dakota Century Code, relating to the disposition of snowmobile registration and trail tax fees, and providing for an annual transfer of highway tax distribution fund moneys to the snowmobile fund; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-24-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-24-05. Disposition of registration fees and trail tax - Transfer from highway tax distribution fund. Fees from registration of snowmobiles must be deposited with the state treasurer and credited to the motor vehicle registrar fund. The snowmobile trail tax must be deposited in a state snowmobile fund in the state treasury. Additionally, an amount equal to the tax collected on thirty gallons of motor fuel multiplied by the number of snowmobiles registered pursuant to this chapter shall be transferred annually from the highway tax distribution fund, before allocation of the fund under section 54-27-19, and credited to the state snowmobile fund. The state parks and recreation department may, upon appropriation by the legislative assembly, expend from such fund moneys it deems necessary for purposes of administering, establishing, and maintaining snowmobile facilities and programs.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

Approved April 28, 1989
Filed April 28, 1989

MUNICIPAL GOVERNMENT

CHAPTER 488

HOUSE BILL NO. 1394
(Sorensen)

ORGANIZATION OF CITY GOVERNMENTS PARTICIPATION

AN ACT to create and enact a new section to chapter 40-01 and a new subsection to section 40-05-01 of the North Dakota Century Code, relating to an organization of city governments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 40-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Authorization to organize and participate in an organization of city governments.

1. Cities incorporated under the statutes of North Dakota are hereby authorized upon motion of the city governing body to organize and participate in an organization of city governments.
2. The organization or organizations authorized hereunder must be organized pursuant to chapters 10-24 through 10-28.

SECTION 2. A new subsection to section 40-05-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To expend city funds for the purpose of participating in an organization of city governments under section 1 of this Act.

CHAPTER 489

SENATE BILL NO. 2351
(Maxson)

JURY TRIAL WAIVER AND TRANSFER

AN ACT to amend and reenact section 40-18-15.1 of the North Dakota Century Code, relating to transfer of municipal ordinance violation cases to county court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 40-18-15.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-15.1. Transfer to county court if jury trial not waived - Expenses of prosecution - Division of funds between city and county. If within ~~fourteen~~ twenty-eight days after arraignment a defendant has not waived in writing the defendant's right to a jury trial in a case where it otherwise exists, the matter must be transferred to the county court for trial. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county or any individual or entity for prosecution or defense services. If the city and the county do not otherwise agree by resolutions of the respective governing bodies, the city is entitled to sixty-five percent and the county is entitled to thirty-five percent of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section. The share of fees, fines, costs, forfeitures, and any other monetary consideration due to the city must be paid to the city treasury at least once each quarter, while the share due to the county must be paid to the county general fund at least once each quarter. At the time of payment, the county court shall account under oath to the city auditor for all money collected.

Approved March 22, 1989
Filed March 23, 1989

* NOTE: Section 40-18-15.1 was also amended by section 1 of Senate Bill No. 2442, chapter 490.

CHAPTER 490

SENATE BILL NO. 2442
(Senator Stenehjem)
(Representative Wentz)

DIVISION OF COLLECTIONS FROM TRANSFERRED CASES

AN ACT to amend and reenact section 40-18-15.1 of the North Dakota Century Code, relating to the division of funds between cities and counties that contract for prosecution and defense services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 40-18-15.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-15.1. Transfer to county court if jury trial not waived - Expenses of prosecution - Division of funds between city and county. If within fourteen days after arraignment a defendant has not waived in writing the defendant's right to a jury trial in a case where it otherwise exists, the matter must be transferred to the county court for trial. The city shall provide a prosecuting attorney and, in the case of any indigent defendant, a defense attorney. The city may contract with the county or any individual or entity for prosecution or defense services. ~~If~~ In the contract, the city and the county ~~do not otherwise may~~ agree by resolutions of the respective governing bodies, ~~the city is entitled to sixty-five percent and the county is entitled to thirty-five percent~~ to a division of all fees, fines, costs, forfeitures, and any other monetary consideration collected from cases transferred under this section. The share of fees, fines, costs, forfeitures, and any other monetary consideration due to the city must be paid to the city treasury at least once each quarter, while the share due to the county must be paid to the county general fund at least once each quarter. At the time of payment, the county court shall account under oath to the city auditor for all money collected.

Approved March 28, 1989
Filed March 28, 1989

* NOTE: Section 40-18-15.1 was also amended by section 1 of Senate Bill No. 2351, chapter 489.

CHAPTER 491

HOUSE BILL NO. 1667

(R. Berg)

(Approved by the Committee on Delayed Bills)

SPECIAL ASSESSMENT NOTICE

AN ACT to amend and reenact sections 40-23-09, 40-23-10, and 40-23.1-07 of the North Dakota Century Code, relating to preparation of assessment lists and methods of notice of assessments of benefits for improvements by special assessment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-23-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-23-09. Assessment list to be prepared - Contents - Certificate attached to assessment list. The commission shall make or cause to be made a complete list of the benefits and assessments setting forth, by legal description or street address or both, each lot or tract of land assessed, the amount each lot or tract is benefited by the improvement, and the amount assessed against each. There shall be attached to the list of assessments a certificate signed by a majority of the members of the commission certifying that the same is a true and correct assessment of the property therein described to the best of their judgment, and stating the several items of expense included in the assessment.

SECTION 2. AMENDMENT. Section 40-23-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-23-10. Publication Notice of assessment list assessments and notice of hearing of objections to list. ~~The~~

1. Unless otherwise provided under this section, the commission shall cause the assessment list, which list shall not include the amount each lot or tract is benefited by the improvement, to be published once each week for two consecutive weeks in the official newspaper of the municipality; together with a notice of the time when and the place where the commission will meet to hear objections made to any assessment by any interested party, his agent, or attorney; provided, that in lieu of publication of an assessment list, if it.
2. If the assessment list includes more than five thousand lots or tracts, the commission may cause it to be filed and made available for public inspection at all times after the first publication of the notice, during reasonable business hours, at such place as shall be designated in the published notice.
3. As an alternative to the notice procedures provided in subsections 1 and 2 of this section, the commission must send a

letter to all property owners of record on the assessment list stating their assessments. The letter may be sent by certified mail or by regular mail attested by an affidavit of mailing signed by the city auditor. When notice is provided under this subsection, the commission shall cause publication of a map outlining the assessment district with a notification stating that if an individual has not yet received a letter regarding that individual's assessment, the individual should furnish the city auditor's office with the individual's present address and the auditor will then mail a copy of the individual's assessments.

4. The date set for such hearing shall be not less than fifteen days after the first publication of the notice.
5. A copy of the notice ~~shall~~ must be mailed to each public utility having property on the assessment list at least ten days before the hearing to its address shown on the tax rolls.
6. Any notice under this section must include the time and place of a commission meeting to hear objections to assessments from an interested party or an interested party's agent or attorney.

SECTION 3. AMENDMENT. Section 40-23.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-23.1-07. Assessment list to be prepared - Contents - Certificate attached to assessment list. The city auditor shall make or cause to be made a complete list of the benefits and assessments setting forth, by legal description or street address or both, each lot, tract, or parcel benefited by the improvement, and the amount assessed against each. There shall be attached to the list of assessments a certificate signed by the city auditor certifying that the same is a true and correct assessment of the property therein described to the best of just judgment, and stating the several items of expense included in the assessment.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 492

HOUSE BILL NO. 1263
(Graba, Haugen)

SIDEWALK SPECIAL ASSESSMENTS

AN ACT to amend and reenact sections 40-29-03, 40-29-05, and 40-29-10 of the North Dakota Century Code, relating to assessment of special assessments for sidewalk construction, rebuilding, or repair against the owners of property benefited by the sidewalk.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-29-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-29-03. Notice to construct, rebuild, or repair sidewalks. Except as otherwise provided in this chapter, if the governing body deems it necessary to construct, rebuild, or repair any sidewalk in the municipality, it shall notify each owner of record at the last address shown in the office of the register of deeds or the county treasurer or occupant of any lot or parcel of land adjoining that would be benefited by the sidewalk to construct, rebuild, or repair the same at his own expense and subject to the approval of the street commissioner or city engineer, within the time designated in the notice. The notice shall be directed in the manner hereinbefore provided to the owner of record or occupant and shall set forth what work is to be done, the character of the same as specified in the ordinance, and the time within which he is required to do the work. The work shall be done to the satisfaction of the street commissioner or city engineer. The notice may be general as to the owner of record or occupant but shall be specific as to the description of the lot or parcel of ground adjacent to where to be benefited by the sidewalk that is to be built or repaired. The street commissioner or city engineer shall serve such notice by certified mail or delivering a copy thereof to the occupant or owner of record of each lot or parcel of occupied land described in the notice, or as to the occupant by leaving a copy thereof at the dwelling house upon such lot or parcel of land with some person over the age of fourteen years residing therein. If any lot or parcel of land is not occupied and service by mail is deemed impractical, the commissioner or city engineer may serve the notice by posting a copy thereof in a conspicuous place therein or immediately in front thereof. If such sidewalk is not repaired within the time fixed in such notice, the street commissioner or city engineer, as soon as practicable, shall repair the same and certify the cost thereof, with his return of service of the notice, to the city auditor, and the cost of such repairs shall be paid out of the sidewalk special fund.

SECTION 2. AMENDMENT. Section 40-29-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-29-05. Assessment of expense. The expense of constructing, repairing, or rebuilding sidewalks shall be assessed against the lots or

parcels of land ~~properly chargeable therewith~~, benefited by the sidewalk by the city engineer, or by the street commissioner in cities having no city engineer, who shall return the assessment and file it in the office of the city auditor. The city auditor shall cause such assessment, together with a notice of the time when and place where the governing body will meet to consider the approval thereof, to be published in one issue of the official newspaper of the city at least ten days prior to the meeting of the governing body at which the approval of the assessment will be considered.

SECTION 3. AMENDMENT. Section 40-29-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-29-10. Review of assessments - Assessment book. The city auditor shall keep in his office a book called "sidewalk assessment book" and shall enter therein the cost certified by the street commissioner or the governing body as an assessment against the lots or parcels of land ~~adjoining any benefited by~~ a sidewalk constructed, repaired, or rebuilt under the provisions of this chapter, and the name of the owners of such lots or parcels of land, if the same are known to him. The governing body shall review all assessments and hear all complaints against the same and approve the same as finally adjusted.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 493

HOUSE BILL NO. 1463
(R. Anderson)

PARK BOARD MEMBER CONTRACTS

AN ACT to amend and reenact section 40-49-10 of the North Dakota Century Code, relating to the interest in contracts of members of the park board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-49-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-49-10. Members of board of park commissioners may receive compensation - Interest in contracts ~~prohibited~~ restricted. The members of the board of park commissioners shall receive such compensation for their services as may be prescribed by the governing body of the municipality ~~and~~. No park board member shall not be directly or indirectly interested in any contract entered into by the board requiring the expenditure of park district funds unless the contract has been approved by two-thirds of the park board. Before the contract is approved, a motion must be made and approved that the service or property is not readily available elsewhere at equal cost. Regardless of this section, any park board, by resolution duly adopted, may contract with park board members for minor supplies or incidental expenses.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 494

HOUSE BILL NO. 1366
(Representative Wentz)
(Senators Maxson, Robinson)

PARK DISTRICT LEVY FOR COMPREHENSIVE HEALTH CARE

AN ACT to create and enact a new subsection to section 40-49-12 and a new subsection to section 57-15-12.2 of the North Dakota Century Code, relating to a tax levy by park districts for comprehensive health care benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 40-49-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

Levy taxes upon all the property within the district, subject to the limitations of section 57-15-12.2, for the purpose of funding a comprehensive health care program for district employees.

SECTION 2. A new subsection to section 57-15-12.2 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A park district levying a tax for a comprehensive health care program for district employees in accordance with section 40-49-12 may levy a tax not exceeding one mill.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 495

SENATE BILL NO. 2186
(Committee on Finance and Taxation)
(At the request of the State Board of Equalization)

NEW INDUSTRY TAX EXEMPTION APPROVAL

AN ACT to amend and reenact sections 40-57.1-03, 40-57.1-04.1, and 40-57.1-05 of the North Dakota Century Code, relating to the approval of tax exemptions for new industries.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-57.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.1-03. Municipalities' authority to grant tax exemption - Notice to competitors - Limitations. Municipalities are hereby authorized and empowered, in their discretion, as limited hereafter, to grant, after negotiation with a potential project operator, partial or complete exemption from ad valorem taxation on all tangible property used in or necessary to the operation of a project for a period not exceeding five years from the date of commencement of project operations, ~~which date shall be determined by the tax commissioner.~~ Provided, however, that the exemption granted under this chapter shall apply only to the valuation over and above the taxable valuation placed upon the property for the last assessment period immediately preceding the date of application for exemption. Negotiations with potential project operators for tax exemption shall be carried on by the city council or commission if the project is proposed to be located within the boundaries of a city, and by the board of county commissioners if such project is proposed to be located outside the corporate limits of any city. A partial exemption shall be stated as a percentage of the total ad valorem taxes assessed against the property. The potential project operator shall publish two notices, the form of which shall be prescribed by the ~~state board of equalization tax commissioner,~~ to competitors of ~~such the~~ application for tax exemption in the official newspaper of the municipality at least one week apart. ~~Such~~ The publications shall be completed not less than fifteen nor more than thirty days before the governing body of the municipality is to consider ~~such the~~ application. The municipality shall, ~~before granting any such exemption, make application to the state board of equalization for approval, and the board shall, if it finds that such exemption will not result in unfair tax reduction competition between political subdivisions of this state, determine whether the granting of the exemption is in the best interest of the people of North Dakota municipality, and if it so determines, shall give its approval. The board shall, after making the determination, certify the findings back to the municipality and to the tax commissioner.~~

* SECTION 2. AMENDMENT. Section 40-57.1-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 40-57.1-04.1 was also amended by section 1 of Senate Bill No. 2518, chapter 496, and section 1 of House Bill No. 1528, chapter 497.

40-57.1-04.1. Ad valorem and income tax exemption for existing structures - Requirements. Notwithstanding any other provision of this chapter, a project operator who otherwise qualifies under this chapter may, upon application consistent with the provisions of this chapter, receive a partial or complete exemption from income taxation and ad valorem taxation on any existing structure used in or necessary to the operation of the project for a period not exceeding five years from the date of commencement of project operations in the structure, ~~which date shall be determined by the tax commissioner.~~ No structure shall qualify for this exemption unless it has been vacant for at least the twelve months prior to the commencement of project operations.

SECTION 3. AMENDMENT. Section 40-57.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.1-05. Reapplication for tax exemption - Discretion of board of equalization. The ~~state board of equalization may~~ municipality, in its discretion, upon the presentation of additional facts and circumstances which were not presented or discovered at the time of the original application for tax exemption under the provisions of this chapter, accept reapplications from project operators at any time if ~~such~~ the project operators first ~~negotiate with the municipality and~~ publish notice of application for tax exemption as required by this chapter.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 496

SENATE BILL NO. 2518

(Richard, Wogsland)

(Approved by the Committee on Delayed Bills)

NEW INDUSTRY IN GOVERNMENT BUILDINGS

AN ACT to amend and reenact section 40-57.1-04.1 of the North Dakota Century Code, relating to the period for which tax exemptions for new industries may be granted; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 40-57.1-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.1-04.1. Ad valorem and income tax exemption for existing structures - Requirements. Notwithstanding any other provision of this chapter, a project operator who otherwise qualifies under this chapter may, upon application consistent with the provisions of this chapter, receive a partial or complete exemption from income taxation and ad valorem taxation on any existing structure used in or necessary to the operation of the project for a period not exceeding five years from the date of commencement of project operations in the structure, which date shall be determined by the tax commissioner. No structure shall qualify for this exemption unless it has been vacant for at least the twelve months prior to the commencement of project operations. Notwithstanding the vacancy requirement, for taxable years beginning after December 31, 1988, the governing body of a municipality may grant additional exemptions of property under this section during a period not exceeding ten years from the date of commencement of project operations in the structure if the structure is owned by the United States, the state, or a political subdivision of the state and leased to the project operator. The project operator shall apply to the governing body of the municipality annually for the exemption and the governing body of the municipality may grant the exemption for only one year at a time.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988, and applies to projects for which exemptions were granted before that date.

Approved April 14, 1989

Filed April 17, 1989

* NOTE: Section 40-57.1-04.1 was also amended by section 1 of House Bill No. 1528, chapter 497, and section 2 of Senate Bill No. 2186, chapter 495.

CHAPTER 497

HOUSE BILL NO. 1528
(Melby)

NEW INDUSTRY EXEMPTION IN SMALLER CITIES

AN ACT to amend and reenact section 40-57.1-04.1 of the North Dakota Century Code, relating to the period of vacancy of existing structures for purposes of tax exemptions for new industries; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 40-57.1-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.1-04.1. Ad valorem and income tax exemption for existing structures - Requirements. Notwithstanding any other provision of this chapter, a project operator who otherwise qualifies under this chapter may, upon application consistent with the provisions of this chapter, receive a partial or complete exemption from income taxation and ad valorem taxation on any existing structure used in or necessary to the operation of the project for a period not exceeding five years from the date of commencement of project operations in the structure, which date shall be determined by the tax commissioner. No structure shall qualify for this exemption unless it has been vacant for at least the twelve months prior to the commencement of project operations, except that in cities with a population of three thousand or less the vacancy period does not apply and the project operator may occupy the structure immediately after it is vacated by the previous occupant.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 22, 1989
Filed March 23, 1989

* NOTE: Section 40-57.1-04.1 was also amended by section 2 of Senate Bill No. 2186, chapter 495, and section 1 of Senate Bill No. 2518, chapter 496.

CHAPTER 498

HOUSE BILL NO. 1224
(Oban)

CITY LODGING AND RESTAURANT TAX RETURNS

AN ACT to amend and reenact section 40-57.3-04 of the North Dakota Century Code, relating to the due date for city lodging and restaurant tax returns; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-57.3-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-57.3-04. Payment of tax - Collection by tax commissioner - Administrative expenses allowed - Rules. The taxes imposed under this chapter are due and payable ~~monthly~~ at the same time the taxpayer is required to file a return under chapter 57-39.2 and must be collected ~~monthly~~ and administered by the state tax commissioner in accordance with the relevant provisions of chapter 57-39.2. The amount the tax commissioner remits monthly to each city as taxes collected for that city's visitors' promotion fund and visitors' promotion capital construction fund shall be reduced by three percent as an administrative fee necessary to defray the cost of collecting the taxes and the expenses incident to collection. The administrative fee must be deposited in the general fund in the state treasury. The tax commissioner shall adopt rules necessary for the administration of this chapter. The penalties and liabilities provided in sections 57-39.2-18 and 57-39.2-18.1 shall specifically apply to the filing of returns and administration of the taxes imposed under this chapter.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable periods beginning after June 30, 1989.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 499

SENATE BILL NO. 2042
(Legislative Council)
(Interim Jobs Development Commission)

TAX INCREMENT PROPERTY DEVELOPMENT

AN ACT to create and enact section 40-58-01.1 and a new section to chapter 40-58 of the North Dakota Century Code, relating to definitions concerning city development and renewal and the use of tax increment financing by cities for the development of certain industrial or commercial property; to amend and reenact sections 40-58-02, 40-58-03, 40-58-04, 40-58-05, 40-58-06, 40-58-07, 40-58-08, 40-58-09, 40-58-10, 40-58-12, 40-58-13, 40-58-15, 40-58-16, 40-58-17, 40-58-18, and 40-58-20 of the North Dakota Century Code, relating to city development and renewal; and to repeal sections 40-58-01 and 40-58-19 of the North Dakota Century Code, relating to the short title and definitions under the urban renewal law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 40-58 of the North Dakota Century Code is hereby created and enacted to read as follows:

Use of tax increment financing for the development of certain industrial or commercial property - Public hearing - Eligible costs of development.

1. The governing body of a municipality may use the tax increment financing method authorized by section 40-58-20 to assist a project developer in the development of industrial or commercial property, as limited by this section, pursuant to an agreement between the municipality and the project developer.
2. Prior to entering into an agreement with a project developer under subsection 1, the governing body of the municipality shall consider the agreement at a public hearing, which may be held in conjunction with the public hearing required by subsection 3 of section 40-58-06, after providing written notice of the hearing at least fifteen days prior to the hearing to potential competitors of the prospective industrial or commercial enterprise, and may enter into the agreement only if it determines that the agreement will not result in unfair competition and that the agreement is in the best interests of the municipality as a whole.
3. For the purpose of determining costs of development of industrial or commercial property to be reimbursed by tax increments under section 40-58-20, only the following public costs necessarily incurred, by either the municipality or the project developer, for the purpose of preparing the property for private development by

the project developer may be included in the agreement as reimbursable public costs of development:

- a. The cost of acquiring, or the market value, of all or a part of the industrial or commercial property;
- b. Costs of demolition, removal, or alteration of buildings and improvements on the industrial or commercial property, including the cost of clearing and grading land;
- c. Costs of installation, construction, or reconstruction of streets, utilities, parks, and other public works or improvements necessary for carrying out the development or renewal plan; and
- d. All interest and redemption premiums paid on bonds, notes, or other obligations issued by the municipality to provide funds for the payment of eligible public costs of development.

SECTION 2. Section 40-58-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

40-58-01.1. Definitions. In this chapter, unless the context otherwise requires:

1. "Area of operation" means the area within the corporate limits of the municipality and the area within five miles [8.05 kilometers] of those limits, except that the term does not include any area that lies within the territorial boundaries of another incorporated city unless a resolution is adopted by the governing body of the other city declaring a need for the inclusion.
2. "Blighted area" means an area other than a slum area which by reason of the presence of a substantial number of slums, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility, or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or obsolete platting, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use.
3. "Board" or "commission" means a board, commission, department, division, office, body, or other unit of the municipality.
4. "Bonds" means any bonds including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures, or other obligations.
5. "Clerk" means the clerk or other official of a municipality who is the custodian of the official records of the municipality.

6. "Development" includes the construction of new buildings, structures, or improvements; the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, or improvements; the acquisition of equipment; and the clearing and grading of land on industrial or commercial property in a development or renewal area. However, for the purpose of determining amounts to be reimbursed by tax increments under section 40-58-20, only those eligible public costs of development enumerated under section 1 of this Act are reimbursable for that purpose.
7. "Development or renewal area" means industrial or commercial property, a slum or blighted area, or a combination of these properties or areas that the local governing body designates as appropriate for a development or renewal project.
8. "Development or renewal plan" means a plan for a development or renewal project which:
 - a. Conforms to the general plan for the municipality as a whole; and
 - b. Is sufficiently complete to indicate any land acquisition, development, demolition and removal of structures, redevelopment, improvements, or rehabilitation as may be proposed to be carried out in the development or renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives relating to appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.
9. "Development or renewal project" may include authorized undertakings or activities of a municipality in a development or renewal area for the development of commercial or industrial property or for the elimination and prevention of the development or spread of slums and blight.
10. "Dwelling" means any building, or structure, or part of a building or structure used and occupied for human habitation or intended to be so used, and includes any appurtenances to the building or structure.
11. "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.
12. "Governing body" means the city council, the board of city commissioners, or the board of township supervisors.
13. "Housing authority" means a housing authority created by and established pursuant to the housing authorities law.
14. "Industrial or commercial property" means unused or underutilized real property that is zoned or used as an industrial or commercial site.

15. "Mayor" means the mayor of a municipality or other officer or body having the duties customarily imposed upon the executive head of a municipality.
16. "Municipality" means any incorporated city in the state.
17. "Obligee" includes any bondholder, agents or trustees for any bondholder, or lessor demising to the municipality property used in connection with a development or renewal project, or any assignee or assignees of the lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.
18. "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic and includes any trustee, receiver, assignee, or other person acting in a similar representative capacity.
19. "Public body" means the state or any municipality, township, board, commission, authority, district, or any other political subdivision or public body of the state.
20. "Public officer" means any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.
21. "Real property" includes all lands, including improvements and fixtures on the land, and property of any nature appurtenant to the land, or used in connection with the land, and every estate, interest, right and use, legal or equitable, in the land, including terms for years and liens by way of judgment, mortgage, or otherwise.
22. "Rehabilitation" or "conservation" includes the restoration and renewal of all or a part of a slum or blighted area, in accordance with a development or renewal plan, by:
 - a. Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements.
 - b. Acquisition of real property and demolition or removal of buildings and improvements on the real property if necessary to eliminate unhealthful, unsanitary, or unsafe conditions, lessen density, reduce traffic hazards, eliminate obsolete or other uses detrimental to the public welfare, or to otherwise remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities.
 - c. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out the purposes of this chapter.
 - d. The disposition of any property acquired in the development or renewal area including sale, initial leasing, or retention by the municipality at its fair value for uses in accordance with the development or renewal plan.

23. "Slum area" means an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of these factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals, or welfare.
24. "Slum clearance and redevelopment" may include:
- a. Acquisition of all or part of a slum area or a blighted area.
 - b. Demolition and removal of buildings and improvements.
 - c. Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out the development or renewal plan.
 - d. Making the land available for development or redevelopment by private enterprise or public agencies including sale, initial leasing, or retention by the municipality at its fair value for uses in accordance with the development or renewal plan.
25. "Urban renewal agency" means a public agency created pursuant to section 40-58-16.

SECTION 3. AMENDMENT. Section 40-58-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-02. Findings and declarations of necessity.

1. It is hereby found and declared that there exist in municipalities of the state slum and blighted areas ~~(as herein defined)~~ which constitute a serious and growing menace, injurious to the public health, safety, morals, and welfare of the residents of the state; that the existence of ~~such~~ these areas contributes substantially and increasingly to the spread of disease and crime, constitutes an economic and social liability, substantially impairs or arrests the sound growth of municipalities, retards the provision of housing accommodations, aggravates traffic problems, and substantially impairs or arrests the elimination of traffic hazards and the improvement of traffic facilities; and that the prevention and elimination of slums and blight is a matter of state policy and state concern in order that the state and its municipalities ~~shall~~ do not continue to be endangered by areas which are focal centers of disease, promote juvenile delinquency, and, while contributing little to the tax income of the state and its municipalities, consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization, and other forms of public protection, services, and facilities. It is further found and declared that certain slum or blighted areas, or portions thereof, may require acquisition, clearance, and disposition subject to use restrictions, as provided in this chapter, since the prevailing condition of decay may make

impracticable the reclamation of the area by conservation or rehabilitation; that other areas or portions thereof may, through the means provided in this chapter, be susceptible of conservation or rehabilitation in such a manner that the conditions and evils ~~hereinbefore enumerated~~ described in this section may be eliminated, remedied, or prevented; and that to the extent feasible salvable slum and blighted areas should be conserved and rehabilitated through voluntary action and the regulatory process.

2. It is further found and declared that there exist in municipalities of the state conditions of unemployment, underemployment, and joblessness detrimental to the economic growth of the state economy; that it is appropriate to implement economic development programs both desirable and necessary to eliminate the causes of unemployment, underemployment, and joblessness for the benefit of the state economy; and that tax increment financing is an economic development program designed to facilitate projects that create economic growth and development.
3. It is further found and declared that the powers conferred by this chapter are for public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the necessity in the public interest for the provisions herein enacted is hereby declared as a matter of legislative determination.

SECTION 4. AMENDMENT. Section 40-58-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-03. Encouragement of private enterprise. A municipality, to the greatest extent it determines to be feasible in carrying out ~~the provisions of~~ this chapter, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the development, rehabilitation, or redevelopment of the urban development or renewal area by private enterprise. A municipality shall give consideration to this objective in exercising its powers under this chapter, including the formulation of a workable program, the approval of ~~urban development or renewal~~ plans consistent with the general plan for the municipality, the adoption and enforcement of ordinances as provided for in section 40-58-18, the exercise of its zoning powers, the enforcement of other laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements, the disposition of any property acquired, and the provision of necessary public improvements.

SECTION 5. AMENDMENT. Section 40-58-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-04. Workable program. A municipality for the purposes of this chapter may formulate a workable program for utilizing appropriate private and public resources including those specified in section 40-58-18 to facilitate the development of industrial or commercial properties, eliminate, and prevent the development or spread of, slums and urban blight, to encourage needed urban rehabilitation, to provide for the redevelopment of slum and blighted areas, or to undertake such of the aforesaid these activities or other feasible municipal activities as may be suitably employed to achieve the objectives of such the workable program. Such The workable program may include, ~~without limitation, provision for: the~~

1. The development of industrial or commercial properties;

2. The prevention of the spread of blight into areas of the municipality which are free from blight through diligent enforcement of housing, zoning, and occupancy controls and standards; ~~the~~
3. The rehabilitation or conservation of slum and blighted areas or portions ~~thereof~~ of those areas by replanning, removing congestion, providing parks, playgrounds, and other public improvements, by encouraging voluntary rehabilitation and by compelling the repair and rehabilitation of deteriorated or deteriorating structures; and ~~the~~
4. The clearance and redevelopment of slum areas or portions ~~thereof~~ of those areas.

SECTION 6. AMENDMENT. Section 40-58-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-05. Finding of necessity by ~~local~~ governing body. No A municipality ~~shall~~ may not exercise any of the powers ~~hereafter~~ conferred upon municipalities by this chapter until ~~after~~ its ~~local~~ governing body ~~shall have adopted~~ adopts a resolution finding that:

1. One or more slum or blighted areas or industrial or commercial properties exist in ~~such~~ the municipality; and
2. The development, rehabilitation, conservation, or redevelopment, or a combination thereof, of ~~such~~ the area or ~~areas~~ properties is necessary in the interest of the public economy, health, safety, morals, or welfare of the residents of ~~such~~ the municipality.

SECTION 7. AMENDMENT. Section 40-58-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-06. Preparation and approval of urban development or renewal plans.

1. A municipality ~~shall~~ may not approve ~~an urban a development or renewal plan for an urban a development or renewal area unless the governing body has by resolution determined such determines that the area to be is a slum or blighted area or a blighted area consists of industrial or commercial property, or a combination thereof of those areas or properties, and designated such designates the area or properties as appropriate for an urban a development or renewal project. The local governing body shall may not approve an urban a development or renewal plan until a general plan for the municipality has been is prepared. For this purpose and other municipal purposes, authority is hereby vested in every a municipality to may prepare, to adopt, and to revise from time to time, a general plan for the physical development of the municipality as a whole giving due regard to the environs and metropolitan surroundings, to establish and maintain a planning commission for such this purpose and related municipal planning activities, and to make available and to appropriate necessary funds therefor for these purposes. A municipality shall may not acquire real property for an urban a development or renewal project~~

unless the ~~local~~ governing body ~~has approved~~ approves the ~~urban development or~~ renewal plan in accordance with subsection 4.

2. The municipality may ~~itself~~ prepare or cause to be prepared an ~~urban a development or~~ renewal plan, or any person or agency, public or private, may submit ~~such a development or renewal plan to a municipality.~~ Prior to its approval of ~~an urban a development or~~ renewal plan, the ~~local~~ governing body shall submit ~~such the plan to the planning commission of the municipality, if any, for review and recommendations as to its conformity with the general plan for the development of the municipality as a whole.~~ However, if the ~~development or renewal plan relates only to proposed development of industrial or commercial property, the governing body is not required to submit the plan to the planning commission unless the proposed development is not consistent with the comprehensive city plan.~~ The planning commission shall submit its written recommendations with respect to the proposed ~~urban development or~~ renewal plan to the ~~local~~ governing body within thirty days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission, or, if no recommendations are received within ~~said thirty days, then without such recommendations the thirty-day period,~~ the ~~local~~ governing body may proceed with the hearing on the proposed ~~urban development or~~ renewal plan prescribed by subsection 3.
3. The ~~local~~ governing body shall hold a public hearing on ~~an urban a~~ development or renewal plan or substantial modification of an approved ~~urban plan, after public notice thereof of the hearing is provided by publication in a newspaper having a general circulation in the area of operation of the municipality.~~ The notice ~~shall must~~ describe the time, date, place, and purpose of the hearing, ~~shall~~ generally identify the ~~urban development or~~ renewal area covered by the plan, and ~~shall~~ outline the general scope of the ~~urban development or~~ renewal project under consideration.
4. Following ~~such the~~ hearing, the ~~local~~ governing body may approve ~~an urban a development or~~ renewal plan if it finds that:
 - a. A feasible method exists for the location of families who will be displaced from the ~~urban development or~~ renewal area in decent, safe, and sanitary dwelling accommodations within their means and without undue hardship to ~~such those~~ families;
 - b. The ~~urban development or~~ renewal plan conforms to the general plan of the municipality as a whole; and
 - c. The ~~urban development or~~ renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the ~~development, rehabilitation, or redevelopment of the urban development or~~ renewal area by private enterprise.
5. ~~An urban~~ A development or renewal plan may be modified at any time; provided, that if modified after the lease or sale by the municipality of real property in the ~~urban development or~~ renewal project area, ~~such the~~ modification ~~shall be~~ is subject to ~~such the~~ rights at law or in equity as a lessee or purchaser, or ~~his~~ the

lessee's or purchaser's successor or successors in interest may be, is entitled to assert. Any proposed modification which will substantially change the urban development or renewal plan as previously approved by the ~~local~~ governing body shall be is subject to the requirements of this section, including the requirement of a public hearing, before it may be approved.

6. Upon the approval of an urban a development or renewal plan by the municipality the provisions of said the plan with respect to governing the future use and building requirements applicable to the property covered by said the plan shall be controlling with respect thereto control the future use of and building on the property.

SECTION 8. AMENDMENT. Section 40-58-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-07. Powers. Every A municipality shall have has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted power:

1. To authorize or undertake and carry out urban development or renewal projects within its area of operation; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter; and to disseminate industrial or commercial development, slum clearance, and urban renewal information.
2. To provide or to, arrange, or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities for or in connection with an urban a development or renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, and other public improvements; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban a development or renewal project, and to include in any contract let in connection with such a the project, provisions to fulfill such of said those conditions as it may deem reasonable and appropriate.
3. Within its area of operation, to enter upon any building or property in any urban development or renewal area in order to make surveys, appraisals, soundings, or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted; to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain, or otherwise, any real property or personal property for its administrative purposes together with any property improvements thereon; to hold, improve, clear, or prepare for development or redevelopment any such property; to mortgage, pledge, hypothecate, or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards,

including the power to pay premiums on any such for the insurance; and to enter into any contracts necessary to effectuate the purposes of this chapter; provided, however, that no statutory provision with respect to the acquisition, clearance, or disposition of property by public bodies ~~shall restrict~~ restricts a municipality or other public body exercising powers hereunder under this subsection, in the exercise of such those functions with respect to an urban a development or renewal project, unless the legislative assembly shall specifically so state.

4. To invest any urban development or renewal project funds held in reserves or sinking funds or any such of those funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to redeem such bonds ~~as have been~~ issued pursuant to section 40-58-10 at the established redemption price ~~established therein~~ or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled.
5. To borrow money and to apply for and accept advances, loans, grants, contributions, and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this chapter, and to give such security as may be required and to enter into and carry out contracts in connection therewith. A municipality may include in any contract for financial assistance with the federal government for an urban a development or renewal project such any conditions imposed pursuant to federal law as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter.
6. Within its area of operation, to make or cause to have made all plans necessary to the carrying out of the purposes of this chapter and to contract with any person, public or private, in making and carrying out such those plans and to adopt or approve, modify, and amend such those plans. Such The plans may include, ~~without limitation:~~
 - a. A general plan for the locality as a whole.
 - b. Urban Development or renewal plans.
 - c. Plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements.
 - d. Plans for the enforcement of state and local laws, codes, and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements.
 - e. Appraisals, title searches, surveys, studies, and other preliminary plans and work necessary to prepare for the undertaking of urban development or renewal projects. The municipality ~~is authorized to may~~ develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and

urban blight, and to apply for, accept, and utilize grants of funds from the federal government for such purposes.

7. To prepare plans and provide reasonable assistance for the relocation of families displaced from an urban a development or renewal area.
8. To appropriate such funds and make such expenditures as may be that are necessary to carry out the purposes of this chapter, and to levy taxes and assessments for such those purposes; to close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places; to plan or replan, zone or rezone any part of the municipality or make exceptions from building regulations; and to enter into agreements with a housing authority or an urban renewal agency vested with urban renewal project powers under section 40-58-15, which agreements may extend over any period, notwithstanding any provision or rule of law to the contrary, respecting action to be taken by such the municipality pursuant to any of the powers granted by this chapter.
9. Within its area of operation, to organize, coordinate, and direct the administration of the provisions of this chapter as they those provisions apply to such the municipality in order that the objective objectives of remedying slum and blighted areas and preventing the causes thereof of those areas and facilitating the development of industrial or commercial properties within such the municipality may be most effectively promoted and achieved, and to establish such new office or offices of the municipality or to reorganize existing offices in order to carry out such that purpose most effectively.
10. To exercise all or any part or combination of the powers herein granted by this section.

SECTION 9. AMENDMENT. Section 40-58-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-08. Eminent domain.

1. A municipality ~~shall have the right to~~ may acquire by condemnation any interest in real property, including a fee simple title ~~thereto~~, which it may deem necessary for or in connection with an urban a development or renewal project under this chapter. A municipality may exercise the power of eminent domain in the manner provided in housing authorities by law; and acts amendatory thereof or supplementary thereto; or it may exercise the power of eminent domain in the manner now or which may be hereafter provided by any other statutory provisions for the exercise of the power of eminent domain. Property. Any property already devoted to a public use may be acquired in a like manner; provided, that no real property belonging to the state, or any political subdivision thereof of this state, may be acquired without its consent.
2. In any proceeding to fix or assess compensation for damages for the taking or damaging of property, or any interest ~~therein~~ in the property, through the exercise of the power of eminent domain or condemnation, evidence or testimony bearing upon the following

matters ~~shall be~~ is admissible and ~~shall~~ must be considered in fixing ~~such the~~ compensation or damages, in addition to evidence or testimony otherwise admissible:

- a. Any use, condition, occupancy, or operation of ~~such the~~ property, which is unlawful or violative of, or subject to elimination, abatement, prohibition, or correction under, any law or in any ordinance or regulatory measure of the state, county, municipality, other political subdivision, or any agency thereof, in which ~~such the~~ property is located, as being unsafe, substandard, insanitary, or otherwise contrary to the public health, safety, or welfare.
 - b. The effect on the value of ~~such the~~ property, of any such use, condition, occupancy, or operation, or of the elimination, abatement, prohibition, or correction of any such use, condition, occupancy, or operation.
3. The foregoing testimony and evidence ~~shall be~~ is admissible notwithstanding that no action has been taken by any public body or public officer toward the abatement, prohibition, elimination, or correction of any such use, condition, occupancy, or operation. Testimony or evidence that any public body or public officer charged with the duty or authority so to do has rendered, made, or issued any judgment, decree, determination, or order for the abatement, prohibition, elimination, or correction of any such use, condition, occupancy, or operation ~~shall be~~ is admissible and ~~shall be~~ is prima facie evidence of the existence and character of such use, condition, or operation.

SECTION 10. AMENDMENT. Section 40-58-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-09. Disposal of property in urban development or renewal area.

1. A municipality may sell, lease, or otherwise transfer real property or any interest ~~therein~~ in real property acquired by it, and may enter into contracts with respect ~~thereto~~ to the real property, in an urban a development or renewal area for residential, recreational, commercial, industrial, or other uses or for public use, or may retain ~~such the~~ property or interest for public use, in accordance with the urban development or renewal plan, subject to such covenants, conditions, and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of future slums or blighted areas, to facilitate the development of industrial or commercial properties, or to otherwise carry out the purposes of this chapter; provided, that ~~such the~~ sale, lease, other transfer, or retention, and any agreement relating thereto, may be made only after the approval of the urban development or renewal plan by the ~~local~~ governing body. The purchasers or lessees and their successors and assigns ~~shall must~~ be obligated to devote ~~such the~~ real property only to the uses specified in the urban development or renewal plan, and may be obligated to comply with ~~such any other requirements as that the municipality may determine to be determines~~ are in the public interest, including the obligation to begin within a reasonable time any improvements on ~~such the~~ real

property required by the urban development or renewal plan. Such The real property or interest shall must be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban development or renewal plan. In determining the fair value of real property for uses in accordance with the urban development or renewal plan, a municipality shall take into account and give consideration to the uses provided in such the plan; the restrictions upon, and the covenants, conditions, and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of such the plan for the development of industrial or commercial properties and the prevention of the recurrence of slum or blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such the purchaser or lessee shall be without power to may not sell, lease, or otherwise transfer the real property without the prior written consent of the municipality until he the purchaser or lessee has completed the construction of any and all improvements which he has the purchaser or lessee is obligated himself to construct thereon on the real property. Real property acquired by a municipality which, in accordance with the provisions of the urban development or renewal plan, is to be transferred, shall must be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the urban development or renewal plan. The inclusions inclusion in any such contract or conveyance to a purchaser or lessee of any such covenants, restrictions, or conditions, including the incorporation by reference therein of the provisions of an urban a development or renewal plan or any part thereof shall of the plan, does not prevent the filing of such the contract or conveyance in the land records of the register of deeds in such a manner as to afford that affords actual or constructive notice thereof of the contract or conveyance.

2. A municipality may dispose of real property in an urban a development or renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as hereinafter provided in this subsection. A municipality may, by public notice by publication once each week for two consecutive weeks in a newspaper having a general circulation in the community prior to the execution of any contract to sell, lease, or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section, invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof, and shall state that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all such redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out, and may negotiate with any persons for proposals for the purchase, lease, or other transfer of any real property acquired by the municipality in the urban renewal area. The municipality may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this chapter; provided, that a notification of intention to accept such proposal shall be filed

with the governing body not less than thirty days prior to any such acceptance in a manner that appropriately carries out the purposes and provisions of this chapter. Thereafter, the municipality may execute such the contract in accordance with the provisions of subsection 1 and deliver deeds, leases, and other instruments and take all steps necessary to effectuate such the contract.

3. A municipality may temporarily operate and maintain real property acquired in an urban a development or renewal area pending the disposition of the property for development or redevelopment, without regard to the provisions of subsection 1, for such any uses and purposes as may be deemed desirable even though not in conformity with the urban development or renewal plan.

SECTION 11. AMENDMENT. Section 40-58-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-10. Issuance of bonds.

1. A municipality ~~shall have power to may~~ issue bonds from time to time in its discretion to finance the undertaking of any urban development or renewal project under this chapter, including, ~~without limiting the generality thereof,~~ the payment of principal and interest upon any advances for surveys and plans for urban development or renewal projects, and ~~shall also have power to may~~ issue refunding bonds for the payment or retirement of such bonds previously issued by it. ~~Such~~ The bonds ~~shall~~ must be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban development or renewal projects under this chapter; provided, however, that the payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban development or renewal projects of the municipality under this chapter, and by a mortgage of all or any part of such urban a development or renewal projects; or any part thereof project, title to which is in the municipality.
2. Bonds issued under this section ~~shall do~~ not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and ~~shall are~~ not be subject to the ~~provisions of~~ any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued under ~~the provisions of~~ this chapter are declared to be issued for an essential public and governmental purpose and, together with interest ~~thereon~~ and income ~~therefrom~~, ~~shall be exempted, are~~ exempt from all ~~taxes~~ taxation.
3. Bonds issued under this section ~~shall must~~ be authorized by resolution or ordinance of the ~~local~~ governing body and may be issued in one or more series and ~~shall must~~ bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, resulting in an average annual net interest cost not exceeding twelve per centum per annum on those issues which are sold at private sale. ~~Such~~ The bonds ~~shall must~~ be in such ~~denomination or~~ denominations, be in such form, either

coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such ~~place or~~ places, and be subject to such terms of redemption with or without premium, be secured in such manner, and have such other characteristics, as may be provided by ~~such the~~ resolution or trust indenture or mortgage issued pursuant ~~thereto~~ to the resolution.

4. The bonds may be sold at not less than par at public sales held after notice published prior to ~~such the~~ sale in a newspaper having a general circulation in the area of operation and in ~~such any~~ other medium of publication as the municipality may determine or may be exchanged for other bonds on the basis of par; provided, that the bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the authorized principal amount of the bonds is sold to the federal government, the balance may be sold at private sale at not less than par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government. The bonds may also be sold at private sale if ~~such the~~ obligations do not exceed the total sum of one hundred thousand dollars. There is no interest rate ceiling on issues sold at public sale or to the state of North Dakota or any of its agencies or instrumentalities.
5. ~~In case any of the~~ If a public ~~officials~~ official of the municipality whose ~~signatures appear~~ signature appears on any bonds or coupons issued under this chapter ~~shall cease~~ ceases to be ~~such officials~~ a public official before the delivery of ~~such the~~ bonds, ~~such the signature shall is,~~ nevertheless, be valid and sufficient for all purposes, ~~the same~~ as if ~~such officials~~ the official had remained in office until ~~such the~~ delivery. Any ~~provision of any~~ law to the contrary notwithstanding, any bonds issued pursuant to this chapter ~~shall be~~ are fully negotiable.
6. In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this chapter or the security ~~therefor~~ for the bond, any ~~such~~ bond reciting in substance that it has been issued by the municipality in connection with ~~an urban~~ a development or renewal project, ~~as herein defined,~~ shall be is conclusively deemed to have been issued for ~~such that~~ purpose and ~~such the project shall be is~~ conclusively deemed to have been planned, located, and carried out in accordance with ~~the provisions of~~ this chapter.

SECTION 12. AMENDMENT. Section 40-58-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-12. Property exempt from taxes and from levy and sale by virtue of an execution.

1. All property of a municipality, including funds, owned or held by it for the purposes of this chapter ~~shall be is~~ exempt from levy and sale by virtue of an execution, and no execution or other judicial process ~~shall may~~ issue against the same nor ~~shall may~~ judgment against a municipality be a charge or lien upon ~~such the~~ property; provided, however, that the provisions of this section

~~shall~~ do not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given pursuant to this chapter by a municipality on its rents, fees, grants, or revenues from urban development or renewal projects.

2. The property of a municipality, acquired or held for the purposes of this chapter, is declared to be public property used for essential public and governmental purposes and ~~such the~~ property ~~shall be~~ is exempt from all taxes of the municipality, the county, the state, or any political subdivision ~~thereof~~ of the state; provided, that such this tax exemption ~~shall terminate~~ terminates when the municipality sells, leases, or otherwise disposes of ~~such the~~ property in an urban a development or renewal area to a purchaser or lessee which is not a public body entitled to tax exemption with respect to ~~such the~~ property.

SECTION 13. AMENDMENT. Section 40-58-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-13. Cooperation by public bodies.

1. For the purpose of aiding in the planning, undertaking, or carrying out of an urban a development or renewal project located within the area in which it is authorized to act, any public body may, upon ~~such~~ any terms, with or without consideration, as it may determine:
 - a. Dedicate, sell, convey, or lease any of its interest in any property or grant easements, licenses, or other rights or privileges therein to a municipality;
 - b. Incur the entire expense of any public improvements made by ~~such the~~ public body in exercising the powers granted in this section;
 - c. Do any and all things necessary to aid or cooperate in the planning or carrying out of an urban a development or renewal plan;
 - d. Lend, grant, or contribute funds to a municipality;
 - e. Enter into agreements which may extend over any period, notwithstanding any ~~provision or rule of~~ law to the contrary with a municipality or other public body ~~respecting relating to~~ action to be taken pursuant to any of the powers granted by this chapter, including the furnishing of funds or other assistance in connection with an urban a development or renewal project; and
 - f. Cause public buildings and public facilities, including parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished; furnish, dedicate, close, vacate, pave, install, grade, regrade, plan, or replan streets, roads, sidewalks, ways, or other places; plan or replan, zone or rezone any part of the public body or make exceptions from building regulations; and cause administrative and other services to be furnished to the

municipality. If at any time title to or possession of any urban development or renewal project is held by any public body or governmental agency, other than the municipality, which is authorized by law to engage in the undertaking, carrying out, or administration of urban development or renewal projects including any agency or instrumentality of the United States of America the federal government, the provisions of the agreements referred to in this section shall inure to the benefit of and may be enforced by such the public body or governmental agency. As used in this subsection, the term "municipality" shall also include an urban renewal agency or a housing authority vested with all of the urban renewal project powers authority pursuant to the provisions of section 40-58-15.

2. Any sale, conveyance, lease, or agreement provided for in this section may be made by a public body without appraisal, public notice, advertisement, or public bidding.
3. For the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project the authority of an urban renewal agency or a housing authority hereunder, a municipality may in addition to its other powers and upon such any terms, with or without consideration, as it may determine do and perform any or all of the actions or things which, by the provisions of subsection 1, a public body is authorized to do or perform, including the furnishing of financial and other assistance.
4. For the purposes of this section, or for the purpose of aiding in the planning, undertaking, or carrying out of an urban development or renewal project of a municipality, such the municipality may in addition to any authority to issue bonds pursuant to section 40-58-10 issue and sell its general obligation bonds. Any bonds issued by a municipality pursuant to this section shall must be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by such the municipality for public purposes generally.

SECTION 14. AMENDMENT. Section 40-58-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-15. Exercise of powers in carrying out urban renewal project powers.

1. A municipality may itself exercise its urban renewal project powers, as herein defined by this section, or may, if the local governing body by resolution determines such the action to be in the public interest, elect to have such those powers exercised by the urban renewal agency created by section 40-58-16 or by the housing authority, if one exists or is subsequently established in the community. In the event the local governing body makes such that determination, the urban renewal agency or the housing authority, as the case may be, shall be is vested with all of the urban renewal project powers in the same manner as though all such those powers were conferred on such the agency or authority instead of the municipality. However, an urban renewal agency or housing

authority may not exercise any rights, powers, functions, and duties of a municipality under this chapter which relate to the development of industrial or commercial property under section 1 of this Act. If the ~~local~~ governing body does not elect to make ~~such~~ a determination under this subsection, the municipality ~~in its discretion~~ may exercise its urban renewal project powers through a board or commissioner or through ~~such~~ any officers of the municipality as the ~~local~~ governing body may by resolution determine.

2. As used in this section, the term "urban renewal project powers" includes the rights, powers, functions, and duties of a municipality under this chapter, except the following: ~~the~~
 - a. The power to determine an area to be industrial or commercial property or a slum or blighted area or combination thereof and to designate ~~such~~ the property or area as appropriate for ~~an~~ urban a development or renewal project; ~~the~~
 - b. The power to approve and amend ~~urban~~ development or renewal plans and to hold any public hearings required with respect ~~thereto~~ to those plans; ~~the~~
 - c. The power to establish a general plan for the locality as a whole; ~~the~~
 - d. The power to formulate a workable program under section 40-58-04; ~~the~~
 - e. The powers, duties, and functions referred to in section 40-58-18; ~~the~~
 - f. The power to make the determinations and findings provided for in sections 40-58-03 and 40-58-05 and subsection 4 of section 40-58-06; ~~the~~
 - g. The power to issue general obligation bonds; and ~~the~~
 - h. The power to appropriate funds, to levy taxes and assessments, and to exercise other powers provided for in subsection 8 of section 40-58-07.

SECTION 15. AMENDMENT. Section 40-58-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-16. Urban renewal agency.

1. There is ~~hereby~~ created in each municipality a public body corporate and politic to be known as the "urban renewal agency" of the municipality; provided, that ~~such~~ the agency shall may not transact any business or exercise its powers ~~hereunder~~ under this chapter until or unless the local governing body has made the finding prescribed in section 40-58-05 and has elected to have the urban renewal project powers exercised by an urban renewal agency as provided in section 40-58-15.

2. If the urban renewal agency is authorized to transact business and exercise powers ~~hereunder~~ under this chapter, the mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which ~~shall must~~ consist of five commissioners. The term of office of each ~~such~~ commissioner ~~shall be~~ is one year.
3. A commissioner ~~shall may~~ not receive ~~no~~ compensation for his services but ~~shall be~~ is entitled to the necessary expenses, including traveling expenses, incurred in the discharge of ~~his the~~ commissioner's duties. Each commissioner shall hold office until ~~his~~ a successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner ~~shall must~~ be filed with the clerk of the municipality and ~~such the~~ certificate ~~shall be~~ is conclusive evidence of the due and proper appointment of ~~such the~~ commissioner.
4. The powers of an urban renewal agency ~~shall must~~ be exercised by the commissioners ~~thereof~~ of the agency. A majority of the commissioners ~~shall constitute~~ constitutes a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws ~~shall~~ require a larger number. Approval of the payment of an account or claim ~~shall must~~ be recorded in the record of the agency's proceedings and this ~~shall be~~ is sufficient to indicate approval without requiring a majority of the commissioners to sign or initial the voucher or order for payment.
5. Any persons may be appointed as commissioners if they reside within the area of operation of the agency which shall be coterminous with the area of operation of the municipality and are otherwise eligible for ~~such~~ appointments under this chapter. The mayor shall designate a chairman and vice chairman from among the commissioners. An agency may employ an executive director, technical experts, and such other agents and employees, permanent and temporary, as it may require, and determine their qualifications, duties, and compensation. For ~~such~~ legal ~~service as~~ services it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before March thirty-first of each year a report of its activities for the preceding calendar year, which report ~~shall must~~ include a complete financial statement setting forth its assets, liabilities, income, and operating expense as of the end of ~~such the~~ calendar year. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that ~~such the~~ report has been filed with the municipality and that the report ~~is~~ available for inspection during business hours in the office of the auditor and in the office of the agency.
6. For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed only after a hearing and after ~~he shall~~ ~~have the~~ commissioner has been given a copy of the charges at least ten days prior to ~~such the~~ hearing and ~~have~~ ~~has~~ had an opportunity to be heard in person or by counsel.

SECTION 16. AMENDMENT. Section 40-58-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-17. Interested public officials, commissioners, or employees. No public official or employee of a municipality or board or commission thereof, and no commissioner or employee of a housing authority or urban renewal agency which has been vested by a municipality with urban renewal project powers under section 40-58-15 shall voluntarily acquire any interest, direct or indirect, in any urban development or renewal project, or in any property included or planned to be included in any urban development or renewal project of such the municipality or in any contract or proposed contract in connection with such urban the development or renewal project. ~~Where such~~ If the acquisition is not voluntary, the interest acquired ~~shall~~ must be immediately disclosed in writing to the ~~local~~ governing body and ~~such the disclosure shall~~ must be entered upon the minutes of the governing body. If ~~any such~~ an official, commissioner, or employee presently owns or controls, or owned or controlled within the preceding two years, any interest, direct or indirect, in any property which ~~he that official, commissioner, or employee~~ knows is included or planned to be included in ~~an urban a development or renewal project, he that official, commissioner, or employee~~ shall immediately disclose this act in writing to the ~~local~~ governing body, and ~~such the disclosure shall~~ must be entered upon the minutes of the governing body, and any such official, commissioner, or employee ~~shall~~ may not participate in any action by the municipality or board or commission thereof, housing authority, or urban renewal agency affecting ~~such the property~~. Any disclosure required to be made by this section to the ~~local~~ governing body ~~shall~~ must be concurrently ~~be~~ made to a housing authority or urban renewal agency which has been vested with urban renewal project powers by the municipality pursuant to the provisions of section 40-58-15. ~~No A~~ commissioner or other officer of any housing authority, urban renewal agency, board, or commission exercising powers pursuant to this chapter ~~shall~~ may not hold any other public office under the municipality other than ~~his the~~ commissioner'ship or office with respect to ~~such the~~ housing authority, urban renewal agency, board, or commission. Any violation of the provisions of this section ~~shall constitute~~ constitutes misconduct in office.

* SECTION 17. AMENDMENT. Section 40-58-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-18. Ordinances relating to repair, closing, and demolition of dwellings unfit for human habitation.

1. ~~Whenever any~~ If a municipality finds that there exist in ~~such the~~ municipality dwellings which are unfit for human habitation due to dilapidation, defects increasing the hazards of fire, accidents or other calamities, lack of ventilation, light or sanitary facilities, or due to other conditions, including those set forth in subsection 3 ~~hereof~~, rendering ~~such those~~ dwellings unsafe or insanitary, or dangerous or detrimental to the health, safety or morals, or otherwise inimical to the welfare of the residents of ~~such the~~ municipality, ~~power is hereby conferred upon such the~~ municipality to may require or cause the repair, closing, or demolition or removal of ~~such those~~ dwellings in the manner ~~herein~~ provided by this section. A "dwelling" shall mean any building, or structure, or part thereof, used and occupied for human habitation

* NOTE: Section 40-58-18 was also amended by section 17 of Senate Bill No. 2047, chapter 83.

or intended to be so used; and includes any appurtenances belonging thereto or usually enjoyed therewith.

2. Upon the adoption of an ordinance finding that dwelling conditions of the character described in subsection 1 ~~hereof~~ exist within a municipality, the governing body of ~~such the municipality is hereby authorized to may~~ adopt ordinances relating to the dwellings within ~~such the municipality which are unfit for human habitation. Such. The ordinances shall must~~ include the following provisions:
 - a. That a public officer be designated or appointed to exercise the powers prescribed by the ordinances.
 - b. ~~Whenever~~ If a petition is filed with the public officer or by at least five residents of the municipality charging that any dwelling is unfit for human habitation or whenever it appears to the public officer on ~~his the public officer's~~ own motion that any dwelling is unfit for human habitation, ~~he the public officer shall, if his the public officer's~~ preliminary investigation discloses a basis for ~~such those~~ charges, issue and cause to be served upon the owner, every mortgagee of record and all parties in interest in ~~such the dwelling,~~ including persons in possession, a complaint stating the charges in that respect. ~~Such The complaint shall must~~ contain a notice that a hearing will be held before the public officer or ~~his the public officer's~~ designated agent at a place ~~therein fixed~~ designated in the complaint not less than ten days nor more than thirty days after the serving of ~~said the~~ complaint; that the owner, mortgagee and parties in interest ~~shall must~~ be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time ~~fixed~~ designated in the complaint; and that the rules of evidence ~~prevailing in courts of law or equity shall are~~ not be controlling in hearings before the public officer.
 - c. If, after ~~such the~~ notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation ~~he, the public officer~~ shall state in writing ~~his the~~ findings of fact in support of ~~such the~~ determination and shall issue and cause to be served upon the owner ~~thereof~~ of the dwelling an order which:
 - (1) If the repair, alteration, or improvement of the ~~said~~ dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality shall fix a certain percentage of ~~such the~~ cost as being reasonable for ~~such that~~ purpose), requires the owner, within the time specified in the order, to repair, alter, or improve ~~such the~~ dwelling to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or
 - (2) If the repair, alteration, or improvement of the ~~said~~ dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the municipality shall fix a certain percentage of ~~such the~~ cost as being reasonable for ~~such that~~ purpose), requires

the owner, within the time specified in the order, to remove or demolish such the dwelling.

- d. If the owner fails to comply with an order to repair, alter, or improve or to vacate and close the dwelling, the public officer may cause such the dwelling to be repaired, altered, or improved, or to be vacated and closed.
 - e. If the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such the dwelling to be removed or demolished.
 - f. The amount of the cost of such any repairs, alterations, or improvements, or vacating ~~the~~ and closing, or removal or demolition by the public officer shall be constitutes a lien against the real property upon which such the cost was incurred and such the lien, including as part thereof an allowance of ~~his~~ the public officer's costs and necessary attorneys' fees, may be foreclosed in judicial proceedings in the manner provided or authorized by law for loans secured by liens on real property. If the dwelling is removed or demolished by the public officer ~~he~~, the public officer shall sell the materials of such the dwelling and shall credit the proceeds of such the sale against the cost of the removal or demolition and if there be any. Any balance remaining, it shall must be paid to the parties entitled ~~thereto~~ to it as determined by proper judicial proceedings instituted by the public officer after deducting the costs of such the judicial proceedings, including ~~his~~ necessary attorneys' fees incurred ~~therein~~ in those proceedings by the public officer, as determined by the court.
3. An ordinance adopted by a municipality pursuant to this section shall must provide that the public officer may determine that a dwelling is unfit for human habitation if ~~he~~ the public officer finds that conditions exist in such the dwelling which are dangerous or injurious to the health, safety, or morals of the occupants of such the dwelling, the occupants of neighboring dwellings, or other residents of such the municipality, or which have a blighting influence on properties in the area. Such Those conditions may include ~~the following, without limitation:~~ defects ~~therein~~ in the dwelling increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair; structural defects; uncleanliness; overcrowding; inadequate ingress and egress; inadequate drainage; or any violation of health, fire, building, or zoning regulations, or any other laws or regulations relating to the use of land and the use and occupancy of building and improvements. Such The ordinance may provide additional standards to guide the public officer or ~~his~~ the public officer's agents or employees in determining the fitness of a dwelling for human habitation.
 4. Complaints or orders issued by a public officer pursuant to an ordinance adopted under this section shall must be served upon persons either personally or by registered or certified mail, but if the whereabouts location of such those persons is unknown and the same cannot be ascertained by the public officer in the

exercise of reasonable diligence, and the public officer shall make an affidavit to that effect, then the serving of ~~such~~ the complaint or order upon ~~such~~ those persons may be made by publishing the ~~same~~ complaint or order once each week for two consecutive weeks in a newspaper printed and published in the municipality, or, in the absence of such newspaper, in one printed and published in the county and circulating in the municipality in which the dwellings are located. A copy of ~~such~~ the complaint or order ~~shall~~ must be posted in a conspicuous place on the premises affected by the complaint or order. A copy of ~~such~~ the complaint or order ~~shall~~ must also be filed with the clerk of the county in which the dwelling is located and ~~such~~ the filing of the complaint or order ~~shall have~~ has the same force and effect as other lis pendens notices provided by law.

5. Any person affected by an order issued by the public officer may petition the district court for an injunction restraining the public officer from carrying out the provisions of the order, and the court may, upon ~~such~~ that petition, issue a temporary injunction restraining the public officer pending the final disposition of the cause- Provided; provided, however, that within sixty days after the posting and service of the order of the public officer, ~~such~~ that person shall petition ~~such~~ the court. Hearings ~~shall~~ must be ~~had held~~ by the court on ~~such~~ the petitions within twenty days, or as soon thereafter as possible, and ~~shall~~ must be given preference over other matters on the court's calendar. The court shall hear and determine the issues raised and ~~shall~~ enter a final order or decree in the proceeding. In ~~all~~ such proceedings the proceeding the findings of the public officer as to facts, if supported by evidence, ~~shall be~~ are conclusive. ~~Costs shall be in the discretion of the~~ The court may assess costs. The remedies ~~herein~~ provided shall be under this section are exclusive remedies and ~~no~~ a person affected by an order of the public officer ~~shall be entitled to~~ may not recover any damages for action taken pursuant to any order of the public officer, or because of compliance by ~~such~~ that person with any order of the public officer.
6. An ordinance adopted by the governing body of the municipality may authorize the public officer to exercise ~~such~~ those powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following power in addition to ~~others herein~~ other authority granted under this section:
 - a. To investigate the dwelling conditions in the municipality in order to determine which dwellings ~~therein~~ are unfit for human habitation;
 - b. To administer oaths, affirmations, examine witnesses, and receive evidence;
 - c. To enter upon any premises for the purpose of making examinations, provided that ~~such entries shall~~ entry must be made in ~~such~~ a manner ~~as to cause~~ that causes the least possible inconvenience to the persons in possession, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted;

- d. To appoint and fix the duties of such officers, agents, and employees as ~~he~~ the public officer deems necessary to carry out the purposes of ~~such the~~ ordinance; and
 - e. To delegate any of ~~his~~ the public officer's functions and powers under ~~such the~~ ordinance to such officers, agents, and employees as ~~he~~ the public officer may designate.
7. The governing body of any municipality adopting an ordinance under this section shall as soon as possible ~~thereafter~~ prepare an estimate of the annual expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigations of the dwellings in ~~such the~~ municipality for the purpose of determining the fitness of ~~such the~~ dwellings for human habitation, and for the enforcement and administration of its ordinance or ordinances adopted under this section.
 8. ~~Nothing in this~~ This section ~~shall~~ may not be construed to abrogate or impair the powers of the courts or of any department of any municipality to enforce any provisions of its charter or its ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this section ~~shall be~~ are in addition and supplemental to the powers conferred by any other law.
 9. ~~Nothing in this~~ This section ~~shall~~ may not be construed to impair or limit in any way the power of the municipality to define and declare nuisances and to cause their removal or abatement, by summary proceedings or otherwise.
 10. The governing body of a city ~~is hereby authorized to~~ may adopt ordinances prescribing minimum standards for the use and occupancy of dwellings throughout the city and to prevent the use or occupancy of any dwelling which is injurious to the public health, safety, morals, or welfare.

SECTION 18. AMENDMENT. Section 40-58-20 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-58-20. Tax ~~increments~~ increment financing.

1. At any time after the governing body of a municipality has approved ~~an urban a development or~~ renewal plan for any ~~urban development or~~ renewal area, it may request the county auditor and treasurer to compute, certify, and remit tax increments resulting from the ~~development or~~ renewal of the area in accordance with the plan and any modifications thereof, and the county auditor and treasurer shall do so in accordance with ~~the provisions of~~ this section.
2. The auditor shall compute and certify the original taxable value of each lot and parcel of real estate in the area, as last assessed and equalized before the date of the request, including the taxable value of any lot or parcel ~~theretofore~~ previously acquired by the municipality or its urban renewal agency, as last assessed and equalized before it was acquired. However, any real property acquired by the city or the city's urban renewal agency prior to July 1, 1973, or more than five years prior to the approval of ~~an urban a development or~~ renewal plan for any ~~urban development or~~ renewal

renewal area, whichever is later, is deemed to have an original taxable value of zero and the county auditor shall so certify.

3. In each subsequent year the auditor shall compute and certify the net amount by which the original taxable value of all lots and parcels of real estate in the area, as then assessed and equalized (including real estate then held by the municipality or urban renewal agency at zero), has increased or decreased in comparison with the original taxable value of all such real estate. The net amount of the increase or decrease is referred to in this section as the incremental value or the lost value for that year, as the case may be.
4. In any year when there is an incremental value, the auditor shall exclude it from the taxable value upon which ~~he~~ the auditor computes the mill rates of taxes levied in that year by the state, the county, the municipality, the school district, and every other political subdivision having power to tax the urban development or renewal area, until the cost of development or renewal of the area has been reimbursed in accordance with this section. However, ~~he~~ the auditor shall extend the aggregate mill rate of ~~such~~ those taxes against the incremental value as well as the original taxable value, and the amount of taxes received from ~~such~~ that extension against the incremental value is referred to in this section as the tax increment for that year.
5. In any ~~such~~ year when there is a lost value, the auditor shall compute and certify the amounts of taxes which would have resulted from the extension against the lost value of the mill rate of taxes levied that year by the state and each political subdivision having power to tax the urban development or renewal area. The amounts so computed are referred to in this section as the tax losses for that year.
6. The county auditor shall segregate all tax increments from the urban development or renewal area in a special fund, crediting to the fund, in each year when there is an incremental value, that proportion of each collection of taxes on real estate within the area which the incremental value bears to the total taxable value in that year.
7. Upon receipt of any tax increments in the fund the county treasurer, at the times when ~~he~~ the county treasurer distributes collected taxes to the state and to each political subdivision for which a tax loss has previously been recorded, shall also remit to each of them from the tax increment fund an amount proportionate to the amount of ~~such~~ that tax loss, until all ~~such~~ those tax losses have been reimbursed. Thereafter, at the time of each ~~such~~ such distribution, ~~he~~ the county treasurer shall remit the entire balance then on hand in the fund to the municipality, until the cost of development or renewal of the area has been reimbursed to the municipality as provided in this section.
8. The cost of development or renewal subject to reimbursement from the tax increment fund for each urban development or renewal area ~~shall~~ must include all expenditures incident to carrying out the urban development or renewal plan for the area and any

modifications thereof, not otherwise reimbursed in one of the ways referred to below, including ~~but not limited to~~ all expenses of the clearance, development, redevelopment, rehabilitation, and conservation of the area ~~as defined in section 40-50-19~~, and all interest and redemption premiums paid on bonds, notes, or other obligations issued by the municipality or urban renewal agency to provide funds for payment of ~~such~~ those expenses, subject to section 1 of this Act for the purpose of determining eligible cost of development of industrial or commercial property. From the total cost to be reimbursed there ~~shall~~ must be deducted, except as provided below, all amounts received from the federal government or others, and all special assessments, revenues, and other receipts except property taxes, which are actually collected and applied to the payment of ~~such the~~ cost or ~~such the~~ bonds, notes, or other obligations, at the times when ~~such those~~ payments are due. However, if the proceeds of tax increments or of bonds, notes, or other obligations are loaned to finance part or all of the cost of a project comprising the restoration, reconstruction, and improvement of a privately owned state historical site situated within the urban development or renewal area or any buildings or structures thereon, as contemplated in section 55-10-08, or of a property listed in the national register of historic places, as contemplated in section 55-10-11, in consideration of the grant to the city of a historic easement with respect thereto, repayments of the loan shall may not be deducted from the cost of development or renewal subject to reimbursement.

9. The tax increments from any urban development or renewal area may be appropriated by the governing body of the municipality for the payment of any general obligation bonds, special improvement warrants, or refunding improvement bonds issued by the municipality to provide funds for payment of the cost of development or renewal, together with interest and redemption premiums thereon, other than that portion, if any, of such principal, interest, and redemption premiums which can be paid when due from collections of special assessments, revenues, or other funds, excluding property taxes, which are pledged for the payment thereof. When special improvement warrants or refunding improvement bonds are issued to pay the cost of public improvements of special benefit to properties within the urban development or renewal area, the governing body may cause ~~such those~~ those special benefits to be computed, together with the cost properly assessable against ~~such those~~ those properties, and may appropriate the tax increments from the area to the payment of ~~such that~~ that cost, in lieu of levying special assessments upon ~~such the~~ the property. In this event the amount so appropriated, divided into the same number of installments as the special assessments and with interest at the same rate on the declining balance thereof, ~~shall be~~ is deemed a part of the special assessments appropriated for payment of the cost, within the meaning of section 40-26-08.
10. When the cost of development or renewal of any urban development or renewal area has been fully paid and all bonds, notes, or other obligations issued by the municipality to pay ~~such that~~ that cost have been retired, or funds sufficient for the retirement thereof have been received by the municipality, the governing body shall cause this to be reported to the county auditor, who shall thereafter

compute the mill rates of all taxes upon the total taxable value of the urban development or renewal area. Any balance then on hand in the tax increment fund ~~shall~~ must be distributed by the county treasurer to the state and all political subdivisions having power to tax property in the area, in amounts proportionate to the amounts of the tax losses previously reimbursed to them.

11. As an alternative to the sale of bonds to be amortized with tax increments as provided in this section, the governing body of a municipality may, in its discretion, grant a total or partial tax exemption for the project in order to provide assistance to a project developer in an urban a development or renewal area, pursuant to agreement with the municipality. However, if a developer of a development or renewal project receives a tax exemption for that project pursuant to this subsection, that project developer may not receive a tax exemption for that project under section 40-57.1-03, 40-57.1-04, 40-57.1-04.1, or 40-57.1-04.3. The amount of annual tax exemption shall be under this subsection is limited to the tax increment as defined in this section as it applies to the development or renewal project and may extend for a period not to exceed fifteen years. In determining the total amount of the tax exemption to be authorized, the municipality shall give due consideration to the same elements as are involved in the sale of bonds to be amortized by tax increments. The amount to be reimbursed, by tax exemption, to the project developer shall must be all or a portion of eligible public costs which have been paid by the project developer, plus interest thereon on those costs at a rate not to exceed ten percent per annum. The amount of tax exemption shall must be an amount sufficient to reimburse the project operator for such those eligible costs, amortized pursuant to said the agreement between the project developer and the city municipality.

SECTION 19. REPEAL. Sections 40-58-01 and 40-58-19 of the North Dakota Century Code are hereby repealed.

Approved April 19, 1989
Filed April 19, 1989

UNIFORM COMMERCIAL CODE

CHAPTER 500

SENATE BILL NO. 2315
(Maxson, Olson)

SUM CERTAIN INTEREST OR PAYMENTS

AN ACT to amend and reenact subsection 1 of section 41-03-06 of the North Dakota Century Code, relating to the definition of a sum certain.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 41-03-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The sum payable is a sum certain even though it is to be paid:
 - a. With stated interest or by stated installments;
 - b. With stated different rates of interest before and after default or a specified date;
 - c. With a stated discount or addition if paid before or after the date fixed for payment;
 - d. With exchange or less exchange, whether at a fixed rate or at the current rate; ~~or~~
 - e. With costs of collection or an attorney's fee or both upon default-;
 - f. With a renegotiable or variable rate of interest; or
 - g. With renegotiable, variable, graduated, annuity, or price-level adjusted payments.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 501

HOUSE BILL NO. 1466
(Representatives O'Shea, Brokaw)
(Senator Freborg)

FARM EQUIPMENT SECURITY INTERESTS

AN ACT to amend and reenact subsections 1 and 2 of section 41-09-40 of the North Dakota Century Code, relating to perfecting security interests in farm equipment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 41-09-40 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The proper place to file in order to perfect a security interest is as follows:
 - a. When the collateral is ~~equipment used in farming operations, or~~ farm products, or growing crops, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the register of deeds in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the register of deeds in the county where the goods are kept.
 - b. When the collateral is timber to be cut, or is minerals or the like (including oil and gas), or accounts subject to subsection 5 of section 41-09-03, or when the financing statement is filed as a fixture filing (section 41-09-34) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded.
 - c. When the collateral is equipment used in farming operations, then in the office of the register of deeds in the county of the debtor's residence and in the office of the secretary of state, or if the debtor is not a resident of this state then in the office of the register of deeds in the county where the equipment is kept.
 - d. In all other cases, in the office of the secretary of state.
2. A filing, other than a filing made pursuant to subdivision c of subsection 1, which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also

effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement. A filing made pursuant to subdivision c of subsection 1 in an improper county is nevertheless effective if the creditor perceived the place in which the creditor filed to be the debtor's county of residence and the creditor filed in the office of the secretary of state.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 502

HOUSE BILL NO. 1165
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

UNIFORM COMMERCIAL CODE FILING FEES

AN ACT to amend and reenact subsection 5 of section 41-09-42 and subsection 3 of section 41-09-43 of the North Dakota Century Code, relating to fees for filing uniform commercial code documents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 41-09-42 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement shall be as follows:
 - a. For filing and indexing any statement under the Uniform Commercial Code, five dollars, and when a nonstandard statement is presented for filing, an additional fee of five dollars plus one dollar per page shall be made.
 - b. For making certified copies of any recorded instrument, five dollars.
 - c. For completing a certificate requesting information, five dollars for the first five entries and one dollar for each additional five entries or fraction thereof.
 - d. For completing a certificate requesting copies, five dollars for the first three copies or fraction thereof, and one dollar for each additional copy.
 - e. For furnishing copies only of any filed instrument, one dollar.

SECTION 2. AMENDMENT. Subsection 3 of section 41-09-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The fee for filing and indexing a termination statement, including sending or delivering the financing statement, shall be ~~three~~ five dollars.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 503

SENATE BILL NO. 2247

(Committee on Appropriations)

(At the request of the Office of Management and Budget)

SECRETARY OF STATE FEES DEPOSIT

AN ACT to amend and reenact section 41-09-42.1 of the North Dakota Century Code, relating to the depositing of fees collected by the secretary of state's office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 41-09-42.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-09-42.1. Fees collected by secretary of state - Deposit in operating general fund. Any fees collected by the secretary of state pursuant to subsections 8, 9, 10, and 11 of section 41-09-42 must be deposited in an operating fund, which is hereby created, under the control of the secretary of state the state general fund.

Approved April 11, 1989

Filed April 12, 1989

OCCUPATIONS AND PROFESSIONS

CHAPTER 504

HOUSE BILL NO. 1256
(Representative Lindgren)
(Senator Peterson)

BARBER QUALIFICATIONS

AN ACT to amend and reenact section 43-04-31 of the North Dakota Century Code, relating to qualifications required to be a registered barber.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-04-31 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-04-31. Qualifications for certificate of registration as registered barber. A person is qualified to receive a certificate of registration to practice barbering if he the person:

1. Is qualified in accordance with the provisions of section 43-04-23;
2. Is at least eighteen years of age;
3. Is of good moral character and temperate habits;
4. Has practiced as a registered apprentice for a period of ~~fifteen~~ twelve months under the immediate supervision of a registered barber; and
5. Has passed a satisfactory examination conducted by the board to determine ~~his~~ that person's fitness to practice barbering.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 505

HOUSE BILL NO. 1255
(Representative Lindgren)
(Senator Peterson)

BARBER'S LICENSE FEES

AN ACT to create and enact a new subsection to section 43-04-42 of the North Dakota Century Code, relating to the fee for restoration of barbershop licenses; and to amend and reenact subsections 5, 7, and 10 of section 43-04-42 of the North Dakota Century Code, relating to renewal fees for barbers' certificates and annual license fees for barbershops; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 5, 7, and 10 of section 43-04-42 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

5. For renewal of master barber's certificate, ~~twenty-five~~ thirty-five dollars.
7. For renewal of apprentice barber's certificate, ~~fifteen~~ twenty dollars.
10. ~~Annual establishment fees~~ For issuance of an annual barbershop license, fifteen dollars, to be paid by each shopowner in advance, five dollars for the first barber chair and two dollars for each additional barber chair which is usable in the shop.

SECTION 2. A new subsection to section 43-04-42 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

For restoration of an expired barbershop license, a ten dollar penalty fee in addition to the annual license fee.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 506

HOUSE BILL NO. 1207

(Committee on Industry, Business and Labor)

(At the request of the State Board of Chiropractic Examiners)

CHIROPRACTIC PRACTICE

AN ACT to create and enact two new sections to chapter 43-06 of the North Dakota Century Code, relating to powers of the state board of chiropractic examiners; to amend and reenact sections 43-06-01, 43-06-02, 43-06-03, 43-06-04, 43-06-08, 43-06-09, 43-06-10, 43-06-10.1, 43-06-11, 43-06-12, 43-06-13, 43-06-15, 43-06-16, and 43-06-19 of the North Dakota Century Code, relating to regulation of the practice of chiropractic; and to repeal section 43-06-14 of the North Dakota Century Code, relating to recording of licenses to practice chiropractic with registers of deeds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "The practice of chiropractic" ~~shall mean~~ means the examination, evaluation, and diagnosis, by means including x-ray, other appropriate diagnostic imaging, clinical laboratory procedures, or pertinent examinations taught by chiropractic colleges accredited by the council on chiropractic education or its successor, preparatory to the treatment of patients, and the treatment of patients by means of the adjustment or manipulation of the spinal column, the vertebral articulations, the appendicular skeleton not excluding the skull, and of any displaced tissue of any kind or nature, and includes the practice of physiotherapy, electrotherapy, and hydrotherapy as, and all other procedures taught by chiropractic schools and colleges, and the adjustment of any displaced tissue of any kind or nature accredited by the council on chiropractic education or its successor, but ~~shall~~ does not include prescribing for or administering to any person any medicine or drug to be taken internally which is now or hereafter included in materia medica, nor performing any surgery, except as is provided in this section, nor practicing obstetrics.
2. "Board" ~~shall mean~~ means the state board of chiropractic examiners.

SECTION 2. AMENDMENT. Section 43-06-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-02. Who exempt from the provisions of this chapter. This chapter shall not apply to:

1. Chiropractors from the District of Columbia, or other states, territories, or countries who are in actual consultation in this state.
2. Students duly enrolled in an a college of chiropractic approved and accredited college of chiropractic by the council on chiropractic education, or its successor, who have completed chiropractic studies of at least nine quarters or the equivalent if the school is on some other basis other than quarters and who are continuing their training under a preceptorship program and performing the duties of an intern under the supervision of a chiropractor licensed in the state of North Dakota who has received approval to supervise such internship by the board and said students having received approval to participate in such internship by the board.
3. A graduate of any approved and accredited college of chiropractic who has for the first time made application for license by examination to practice chiropractic in the state of North Dakota, may and who, under the supervision of a North Dakota licensed chiropractor, perform performs the duties of an intern, provided that a supervising chiropractor has certified to the board that the graduate is of good character and competent chiropractic ability. The authorization granted by the board shall terminate on the day of issuance of a chiropractic license after the North Dakota chiropractic examination for which application is made; except such authorization granted shall terminate when the results of that North Dakota chiropractic examination are announced for those graduates who do not receive a passing grade on that examination within fifteen months from the date issued by the board.
4. Nothing in this Act is to be construed to impinge upon the practice of medicine by a physician and surgeon or an osteopathic physician and surgeon who has adequate training in the use of manipulative and adjustive procedures of the spine and appendicular skeleton.

SECTION 3. AMENDMENT. Section 43-06-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-03. State board of chiropractic examiners - Members - Appointment - Qualifications. The state board of chiropractic examiners shall consist of five members appointed by the governor. Each person appointed shall must:

1. Be a licensed practicing chiropractor of integrity and ability Have a license to practice chiropractic in North Dakota.
2. Be Have been a resident of this state and have practiced chiropractic in this state for at least five consecutive years immediately before appointment to the board.
3. Have the degree of doctor of chiropractic from a recognized school Remain a resident of this state and continue in active practice in this state during the term of office.
- 4- Have practiced chiropractic continually in this state for at least two years.

~~Not all of the appointed members of the board shall be graduates of the same school or college of chiropractic.~~

SECTION 4. AMENDMENT. Section 43-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-04. Board of chiropractic examiners - Members - Term of office. Each member of the board shall qualify by taking the oath of office required of civil officers and shall hold office for a term of five years and until ~~his~~ the member's successor is appointed and qualified. The terms of office of the members of the board shall be so arranged that one term and only one shall expire on the thirty-first day of ~~December~~ August of each year. Vacancies on the board shall be filled by appointment by the governor. When a vacancy occurs on the board by expiration of the term, death, or resignation of a member, or removal for other cause, the North Dakota chiropractic association shall nominate, by procedure adopted in the bylaws of said association, to the governor three qualified persons for each vacancy. The governor shall appoint a member to fill the vacancy on the board from the three nominees.

SECTION 5. A new section to chapter 43-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Powers of board.

1. The board shall administer the provisions of this chapter and the administrative rules of the board relating to the practice of chiropractic. It shall have all powers, rights, and duties as provided in chapter 28-32.
2. The board shall pass upon the qualifications of applicants for licenses to practice chiropractic. It shall examine and renew the licenses of duly qualified applicants.
3. The board shall regulate the practice of chiropractic and shall enforce the provisions of this chapter and the rules of the board. The board shall investigate complaints of violations and cause the prosecution of persons violating the provisions of this chapter or the administrative rules of the board.
4. The board may appoint a peer review committee and employ such personnel and incur such expenses as may be necessary for the performance of the board's duties and the enforcement of this chapter.
5. The board may inspect upon complaint or probable cause, at all reasonable times, any chiropractic office or place where chiropractic services are performed.
6. The board may adopt and amend administrative rules, consistent with the provisions of this chapter governing the practice of chiropractic and the diagnosis and treatment of patients, the enforcement of this chapter, and proper performance of its duties, including:
 - a. A code of ethical conduct governing the practice of chiropractic.

- b. Requirements, standards, and examinations to determine the intellectual, educational, scientific, technical, and professional qualifications of applicants for license.
- c. Matters pertaining to the content and conduct of examination.
- d. Matters pertaining to the operation and registration of chiropractic facilities.
- e. Matters pertaining to the practice and certification of chiropractic specialties by licensed doctors of chiropractic.
- f. The quantity, type, and character of postgraduate study to be done by any licensee in order to comply with the provisions of this chapter.
- g. Set policies and procedures on what constitutes professional or unprofessional conduct.

SECTION 6. AMENDMENT. Section 43-06-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-08. License required - Application - Examination required - Fee. No person ~~shall~~ may practice chiropractic in this state unless that person has a license from the state board of chiropractic examiners. Any person who desires a license shall apply to the board and submit to an examination. Each applicant shall present with the application a diploma from a college of chiropractic accredited by the council on chiropractic education or its successor, or a photocopy of the same, or a certificate from the college stating that the applicant is a student in good standing in the student's last trimester, and proof that the applicant has the required qualifications. The board may allow an applicant to take the examination during the period that the applicant is attending the applicant's last trimester but may not issue a license until the applicant has graduated and has provided the board with a diploma as provided in this section. Before beginning the examination, the applicant shall pay to the secretary-treasurer of the board a fee, to be determined by the board from time to time, of an amount not to exceed two hundred dollars. The examination shall be held twice yearly at intervals of approximately six months with date and place to be determined by the board.

SECTION 7. AMENDMENT. Section 43-06-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-09. Chiropractor - Qualifications. An applicant for examination to practice chiropractic in this state shall have a degree or a certificate proving enrollment in the last trimester of college received from an approved and accredited college of chiropractic where the resident course of instruction is not less than four years of nine months each; or four thousand hours. An approved and accredited college of chiropractic within the meaning of this chapter is a college of chiropractic that is approved by the board and accredited by the council on chiropractic education or its successor.

SECTION 8. AMENDMENT. Section 43-06-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-10. Examination - Subjects covered. The examination for a license to practice chiropractic in this state must be in the manner and form as prescribed by the board from time to time. It must cover the following subjects:

1. Anatomy.
2. Physiology.
3. ~~Symptomatology.~~
4. ~~Diagnosis.~~
5. ~~Nerve tracing.~~
6. ~~4.~~ Nutrition.
7. ~~5.~~ Chiropractic Nonsurgical orthopedics.
8. ~~6.~~ Chemistry.
9. ~~7.~~ Pathology.
10. ~~Bacteriology.~~
11. ~~Obstetrics and gynecology.~~
8. Public health.
9. Neurology.
12. ~~10.~~ Chiropractic philosophy jurisprudence.
13. ~~11.~~ Chiropractic jurisprudence philosophy, ethics, adjusting, and patient management as taught by approved and accredited colleges of chiropractic.
14. ~~12.~~ X-ray and diagnostic imaging.

SECTION 9. AMENDMENT. Section 43-06-10.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-10.1. National board examination. The board may in its discretion accept all parts ~~one and two~~ of the national ~~examining~~ board examination in lieu of part of an examination for a license, providing all other requirements are met but ~~will~~ shall require examination in:

1. ~~Nutrition.~~
2. ~~Chiropractic orthopedics.~~
3. ~~Nonsurgical gynecology.~~
4. ~~Chiropractic jurisprudence, adjusting, and patient management as taught by approved and accredited colleges of chiropractic.~~

5- ~~X-ray~~ chiropractic jurisprudence and practical examinations.

SECTION 10. AMENDMENT. Section 43-06-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-11. License - When issued - Who issues - Title used by licensed chiropractor. A license to practice chiropractic in this state shall be issued by the board to an applicant who has submitted proof of the required qualifications and passed the required examination. No license to practice chiropractic shall be granted except upon the affirmative vote of at least three of the members of the board. A licensed chiropractor ~~may not use the title physician, or surgeon, but~~ may use the title doctor of chiropractic, chiropractor, chiropractic physician, or D. C.

SECTION 11. AMENDMENT. Section 43-06-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-12. Reexamination - Fee. If an applicant for a license to practice chiropractic fails to pass the examination, the board, within one year after rejection, may permit that person to ~~take a second~~ retake the examination, upon the payment of a fee, to be determined by the board from time to time, of an amount not to exceed two hundred dollars.

SECTION 12. AMENDMENT. Section 43-06-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-13. Term of license - Renewal - Fee - Requirements. A license to practice chiropractic in this state is valid for one year only and must be renewed on or before the first day of September of each year. The fee for renewal of a license must be determined by the board, but may not exceed two hundred dollars. The board, ~~before~~ shall establish by rule the number of hours necessary for annual continuing education. ~~Before it issues a renewal license, the board shall require each applicant who has a license to practice in this state to attend a postgraduate course consisting of at least twelve hours sponsored by a college of chiropractic, accredited by the council on chiropractic education, or its successor and approved by the board, a health-related seminar sponsored by an equally accredited college or university, a medical seminar qualifying for continuing education credits, or to attend at least a two-day session consisting of a minimum of twelve hours of the educational program arranged by the North Dakota chiropractic association and approved by the board. A license which has not been renewed, as a result of nonpayment of annual registration fees required by this chapter or as a result of the failure by licensee to attend the required annual continuing education, may be reinstated upon payment to the board of the amount of renewal fees then in default along with or by certification that the required continuing education has been completed within sixty days after the expiration of the previous license. In either case, the board may charge an additional administrative fee to be fixed by the board not to exceed four hundred dollars. In addition to the payment of fees, the board, after an investigation, may require a chiropractor whose license has not been renewed to submit to a reexamination as to the applicant's qualifications to practice chiropractic before the applicant is reinstated, if the board in the exercise of its discretion finds and determines that the best interests of the public and the applicant will be served thereby.~~

SECTION 13. AMENDMENT. Section 43-06-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-15. Grounds for revocation or refusal to grant license suspension of license or other action of the board - Sworn statement - Investigation - Hearing. The board may refuse to grant, or may revoke, a license for any of the following reasons:

1. Dishonorable, unprofessional The board may revoke, suspend, or immoral conduct take such other action as provided in this section regarding the license of any chiropractor in this state who:
 - a. Has a mental or physical condition such that the person is unable to safely engage in the practice of chiropractic.
 - b. Has been declared incompetent or seriously mentally ill by a court of competent jurisdiction and thereafter has not been declared competent or released from supervision.
 - c. Is suffering from alcoholism or drug addiction which endangers the public by impairing the chiropractor's ability to practice safely.
 - d. Procured the license to practice by fraud or mistake.
 - e. Has engaged in unprofessional or dishonorable conduct, including false or misleading advertising, rendering excessive or inappropriate treatment, or charging unconscionable fees.
 - f. Has been convicted of a crime involving moral turpitude, illegal possession or distribution of drugs, or any crime that would affect the person's ability to practice as a licensed chiropractor. A copy of the record of conviction or plea of guilty or nolo contendere is conclusive evidence.
 - g. Has been aided, assisted, or enabled any unlicensed person to practice chiropractic contrary to this chapter or rule of the board.
 - h. Has engaged in the practice of abortion.
 - i. Has made use of any advertising statement of a character tending to deceive or mislead the public.
 - j. Has failed to maintain a chiropractic facility in safe and sanitary conditions.
 - k. Has incurred a suspension or revocation in another jurisdiction as a result of acts similar to acts described in this section or rule of the board. A certified copy of the suspension or revocation in the other jurisdiction is conclusive evidence.
 - l. Has committed any violation of the provisions of this chapter and the code of ethics or rules as adopted by the board including the failure to submit for physical or mental examination or to provide information as required by the board.
 - m. Has practiced chiropractic while the license to practice was suspended or revoked.

- n. Has, while under probation, violated its terms.
2. **Chronic inebriety** Any person, health care facility, business, or **persistent inebriety** organization is immune from civil liability or criminal prosecution for submitting a sworn statement and other reports and information to the board under subsection 5 or for otherwise reporting to the board violations or alleged violations under this chapter. The reports are not public records.
 3. **Mental aberration** Members of the board and persons employed by the board or engaged in the investigation or prosecution of violations and in the preparation and management of charges of violations of this chapter on behalf of the board, including members of any peer review committee, are immune from civil liability and criminal prosecution for any actions, transactions, or publications in the execution of, or relating to, their duties under this chapter.
 4. **Excessive use of narcotics** A doctor of **narcotics** chiropractic who is the subject of an investigation by, or on behalf of, the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any question raised by, or on behalf of, the board relating to the subject of the investigation and providing copies of patient health records, as reasonably requested by the board, to assist the board in its investigation.
 5. **Practice** Any person, including a member of **criminal abortion** the board, may file a sworn statement and other reports and information with any member of the board against a licensed chiropractor charging the chiropractor with any of the offenses or conditions set forth in subsection 1, which statement must set forth a specification of the charges. When the statement has been filed, the board shall make an investigation as provided by subsection 6.
 6. **Violation** When the statement and other reports and information have been filed, the board shall notify the licensed chiropractor of the **provisions** allegations and shall thereafter make an investigation for the purpose of determining whether the allegations in the statement constitute a basis for further proceedings. The investigation must be conducted in such manner and at such time and place as in the judgment of the board will best ascertain the facts. The board may appoint a peer review committee. The board, in order to pursue the investigation, has the power to subpoena and examine witnesses and records, including patient records, and to copy, photograph, or take samples. It may require the licensed chiropractor to give statements under oath, to submit to a physical or mental examination, or both, by a physician or physicians and other qualified evaluation professionals selected by the board if it appears to be in the best interests of the public that this **chapter** evaluation be secured. The board may examine and review any relevant medical or psychological records, including test results and x-rays relative to the examination or treatment of the licensed chiropractor. A written request from the board constitutes authorization to release information. The medical or psychological information is not public record.
 7. If, based on the investigation or report from a peer review committee, the board has reasonable cause to believe that there is

- a basis for further proceedings, the board shall prepare a complaint and serve it, along with a notice of hearing, on the licensed chiropractor and thereafter proceed with a hearing in the matter under chapter 28-32. All hearings must be held in Bismarck at the state capitol unless the board and the licensed chiropractor agree otherwise.
8. After the hearing, the board, under section 28-32-13, shall make and give notice of its determination or decision as to whether the offenses charged have been committed or the conditions charged to not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:
- a. Revoke the license;
 - b. Suspend the licensee's right to practice for a period not to exceed one year;
 - c. Suspend its judgment of revocation on terms and conditions determined by the board;
 - d. Place the licensee on probation; or
 - e. Take any other disciplinary action which the board in its discretion considers proper, including the ordering of an adjustment to a patient's bill or refund of such amount previously paid, including reasonable interest from the date of the order, to a patient or payor of any unconscionable fees for chiropractic services.
 - f. In addition to the actions imposed in subdivisions a through e, the board may:
 - (1) Require payment of all cost of proceedings resulting in a disciplinary action.
 - (2) Impose a civil penalty not exceeding ten thousand dollars for each separate violation, to deprive the chiropractor of any economic advantage gained by reason of the violation found and to reimburse the board for the cost of the investigation and proceedings.
9. In cases of revocation, suspension, or probation, the board shall record the facts of the case and all actions of the board.
10. On the expiration of a term of suspension, the licensee must be reinstated by the board if the chiropractor applies to the board and furnishes evidence, satisfactory to the board, that the licensee is then of good character and conduct or restored to good health and that the licensee has not practiced chiropractic during the term of suspension and is competent to practice in this state. If the evidence fails to establish those facts to the satisfaction of the board, the board may require the applicant to submit to an examination in accordance with sections 43-06-08 through 43-06-12 or shall proceed to hearing on revocation with notice as provided in subsection 7.

11. Any licensed chiropractor may take corrective action or voluntarily relinquish the chiropractor's license to the board before a formal order of the board on such terms and conditions as may be agreed by the licensed chiropractor and the board.

The accused shall be furnished a copy of the complaint and given a hearing before the board, in person or by attorney.

SECTION 14. A new section to chapter 43-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Peer review of services and fees.

1. The board, upon receipt of an inquiry from a patient, a third-party payor, including any governmental agency, or a chiropractor as to whether a chiropractor licensed in this state properly utilized services and rendered or ordered appropriate treatment or services and whether the cost of the treatment was unconscionable for a particular patient, may appoint a peer review committee for the purpose of investigation of the matter and rendering an opinion thereon.
2. The peer review committee must be appointed by the board and function as its agent and may consist of different individuals for review of different cases.
3. The peer review committee shall investigate each inquiry submitted by the board. It shall examine such witnesses, review such patient and business records, and otherwise take whatever action is necessary to best ascertain the facts. It shall transmit all information it possesses to the board and shall report its findings to the board. The board shall furnish copies of the findings to the patient, chiropractor, and third-party payor. The finding of the peer review committee on each inquiry must include a determination of whether the chiropractor properly utilized services and rendered or ordered appropriate treatment or services and whether the cost of the treatment was unconscionable.
4. The determinations of the peer review committee must be presumed valid and may be considered as prima facie evidence in any further proceedings by the board.
5. The acceptance of, or the request of, payment for treatment rendered to a patient by a chiropractor constitutes the consent of the chiropractor to the submission of all necessary records and other information concerning the treatment to the board or peer review committee.
6. The board may adopt rules it considers necessary and appropriate to implement the peer review system and activities established under this chapter.
7. All data and information, including patient records acquired by the board or the peer review committee, in the exercise of its duties and functions, are confidential and closed to the public. All board and peer review committee meetings wherein patient testimony

or records are taken or reviewed are confidential and closed to the public.

8. Any third-party payor, including any governmental agency, making a request under this section may be charged a fee by the board equal to the administration costs of performing the review.

SECTION 15. AMENDMENT. Section 43-06-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-16. Duties of chiropractor. Every licensed chiropractor practicing in this state shall:

1. Observe all state and municipal regulations relating to the control of contagious and infectious diseases.
2. Sign death and birth certificates.
3. Sign certificates pertaining to public health.
4. Report to the proper health officer in the manner required of licensed physicians.

All certificates signed by a chiropractor licensed to practice in this state shall be of the same force and effect as ~~if~~ those signed by other licensed physicians.

SECTION 16. AMENDMENT. Section 43-06-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-06-19. Penalty. Any person who violates any of the provisions of this chapter, and any person who, without complying with the provisions of this chapter:

1. Practices or attempts to practice chiropractic;
2. Advertises as a chiropractor; or
3. Uses the terms or letters, doctor of chiropractic, chiropractor, D. C., chiropractic physician, or any other title that will induce the belief that ~~he~~ the person is engaged in the practice of chiropractic,

is guilty of a class B misdemeanor.

SECTION 17. REPEAL. Section 43-06-14 of the North Dakota Century Code is hereby repealed.

Approved April 7, 1989
Filed April 7, 1989

CHAPTER 507

SENATE BILL NO. 2205
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

CONTRACTORS' BONDS

AN ACT to amend and reenact section 43-07-11 of the North Dakota Century Code, relating to bond requirements of contractors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 43-07-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-11. Contractor's bond - Requirements. Every contractor as hereinbefore defined shall be required to execute and file with the application for license required by this chapter a good and valid bond issued by a surety company authorized to do business in this state or, in the case of class D contractors only, a personal bond with two sureties who are acceptable to the registrar and who are residents of the state of North Dakota. Every such bond for a class A contractor shall be written in the amount of two thousand dollars; bonds for class B, C, and D contractors shall be in the amount of one thousand dollars, each running to the state of North Dakota and conditioned upon the payment of all taxes, including the premiums under the ~~Workmen's~~ Workers' Compensation Law, title 65, and contributions due under the Unemployment Compensation Law, chapters 52-01 through 52-07.1, of the state of North Dakota, all use taxes required to be paid by the contractor to the state of North Dakota and all income taxes withheld or required to be withheld from employees pursuant to chapter 57-38, which may accrue to the state of North Dakota or the political subdivisions thereof on account of the execution and performance of the construction contract or subcontract; provided that any bond required by this section shall be in addition to any bond required by the provisions of section 48-01-05 and shall also be in addition to the obligation imposed by the provisions of section 57-40.2-14 upon a surety company to the state of North Dakota. If any surety or bonding company or one or more sureties decides to terminate the contractor bond for any reason, the company or sureties shall give the bond recipient and secretary of state sixty days' notice before the termination takes effect. Every contractor, as hereinbefore defined, upon making application for renewal of his license shall not be required to furnish a contractor's bond; however, the secretary of state as registrar shall not issue a certificate of renewal to any contractor upon notification by any department or agency of the state or political subdivision thereof, any secrecy provisions contained in the North Dakota tax laws notwithstanding, that the contractor has not paid a tax or other obligation presently due to the state of North Dakota or its political subdivisions. Upon notification that the contractor has been delinquent in the payment of any tax or other obligation to the state of North Dakota or the political subdivisions thereof, the secretary of state shall require the bond specified herein prior to the renewal of the license.

Approved March 14, 1989
Filed March 15, 1989

* NOTE: Section 43-07-11 was also amended by section 51 of Senate Bill No. 2056, chapter 69.

CHAPTER 508

SENATE BILL NO. 2087
(Committee on State and Federal Government)
(At the request of the State Engineer)

PUBLIC CONTRACT BID REQUIREMENTS

AN ACT to amend and reenact sections 43-07-12 and 48-02-04 of the North Dakota Century Code, relating to requirements for bids for public contracts and advertisement for bids.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-12. Bids to show license issued. All bids and proposals for the construction of any public contract project subject to the provisions of this chapter shall contain a copy of the license or certificate or renewal thereof issued by the secretary of state enclosed in the required bid bond envelope. No contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as hereinbefore provided. A contractor must be the holder of a license at least ten days prior to the date set for receiving bids, to be a qualified bidder. ~~The requirements of this section do not apply to bids submitted to the state highway department.~~ A bid submitted without this information properly enclosed in the bid bond envelope shall not be read nor considered and shall be returned to the bidder. This section does not apply to bids submitted:

1. To the state highway department; or
2. For use of municipal, rural, and industrial water supply funds authorized by Public Law No. 99-294 [100 Stat. 418].

* SECTION 2. AMENDMENT. Section 48-02-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-02-04. Contents of advertisement. The advertisement for bids required by section 48-02-03 shall state:

1. When and where the plans, drawings, and specifications therefor may be seen and examined;
2. The place where, and the day and hour when, the bids will be opened;
3. That the right of the board to reject any and all bids is reserved;
4. Each bid shall be accompanied by a separate envelope containing a bidder's bond in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal and by a surety

* NOTE: Section 48-02-04 was also amended by section 2 of Senate Bill No. 2418, chapter 562.

company authorized to do business in this state, conditioned that if the principal's bid be accepted and the contract awarded to him, he, within ten days after notice of award, will execute and effect a contract in accordance with the terms of his bid and a contractor's bond as required by law and the regulations and determinations of the governing board;

5. All bidders, except bidders on municipal, rural, and industrial water supply projects authorized for funding under Public Law No. 99-294 [100 Stat. 418], must be licensed for the highest amount of their bids, as provided by section 43-07-05. For municipal, rural, and industrial water supply projects authorized for funding under Public Law No. 99-294 [100 Stat. 418], the advertisement must state that unless a bidder obtains a contractor's license for the highest amount of the contractor's bid within twenty days after it is determined the bidder is the lowest and best bidder, the bid will be rejected and the contract awarded to the next lowest, best, and licensed bidder; and
6. No bid will be read or considered which does not fully comply with the above provisions as to bond and licenses, and any deficient bid submitted will be resealed and returned to the bidder immediately.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 509

SENATE BILL NO. 2367
(Schoenwald)

CONTRACTOR INFORMATION SHARING AMONG STATE AGENCIES

AN ACT to amend and reenact sections 43-07-25, 52-01-03, subsection 4 of section 57-38-57, and section 65-04-15 of the North Dakota Century Code, relating to the sharing of information among the offices of the secretary of state, job service North Dakota, tax commissioner, and workers compensation bureau with respect to contractors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-25 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-07-25. Public awareness program Licensed contractors' list. On request, the registrar shall provide city and county enforcement officials with a list of contractors licensed under this chapter. The registrar shall also provide similar information to persons governed by section 43-07-24. Whenever the registrar obtains information on the activities of a contractor doing business in this state of which officials of the workers compensation bureau, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the registrar shall provide any relevant information to those officials for the purpose of administering their duties.

* SECTION 2. AMENDMENT. Section 52-01-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-01-03. Disclosure of information. Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota Unemployment Compensation Law and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or his legal representative shall be supplied with information from the records of the job insurance division, to the extent necessary for the proper presentation of his claim in any proceeding under the North Dakota Unemployment Compensation Law with respect to such claim. Subject to such restrictions as the bureau by regulations may prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon a request, the bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and

* NOTE: Section 52-01-03 was also amended by section 1 of Senate Bill No. 2117, chapter 598.

may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under the North Dakota Unemployment Compensation Law. The bureau may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association, rendered pursuant to the North Dakota Unemployment Compensation Law, and in connection with such request, may transmit any such report or return to the comptroller of the currency of the United States as provided in subsection c of section 3305 of the federal Internal Revenue Code. The bureau shall request and exchange information for purposes of income and eligibility verification to meet the requirements of section 1137 of the Social Security Act.

The bureau may provide the workers compensation bureau, the state labor commissioner, and the state tax commissioner with information obtained pursuant to the administration of the North Dakota Unemployment Compensation Law. Any information so provided must be used only for the purpose of administering the duties of the workers compensation bureau, the state labor commissioner, and the state tax commissioner.

Whenever the bureau obtains information on the activities of a contractor doing business in this state of which officials of the secretary of state, workers compensation bureau, or the tax commissioner may be unaware and that may be relevant to duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.

SECTION 3. AMENDMENT. Subsection 4 of section 57-38-57 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The tax commissioner is hereby authorized to furnish to the workers compensation bureau or, to the job service North Dakota, or to the secretary of state, upon the their request of either a list or lists of employers showing only the names, addresses, and the tax department file identification numbers of such employers; provided, that any such list shall may be used by the bureau to which it is furnished only for the purpose of administering the duties of such bureau the requesting governmental unit.

SECTION 4. AMENDMENT. Section 65-04-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-04-15. Information in employer's reports confidential - Penalty if employee of bureau divulges information. The information contained in an employer's report is for the exclusive use and information of the bureau in the discharge of its official duties and is not open to the public nor usable in any court in any action or proceeding pending therein unless the bureau is a party thereto. The information contained in the report, however, may be tabulated and published by the bureau in statistical form for the use and information of the state departments and of the public. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any office or employment with the bureau.

The ~~workmens~~ workers compensation bureau may upon request of the state tax commissioner or the secretary of state furnish to them a list or lists of employers showing only the names, addresses, and ~~workmens~~ workers

compensation bureau file identification numbers of such employers; provided, that any such list so furnished shall be used by the tax commissioner or the secretary of state only for the purpose of administering their duties. The bureau may provide the commissioner of labor or job service North Dakota with information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of the commissioner of labor or job service North Dakota. Whenever the bureau obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 510

HOUSE BILL NO. 1375
(Tollefson, Aas, Frey)

ELECTRICIANS' ADVERTISING

AN ACT to create and enact a new section to chapter 43-09 of the North Dakota Century Code, relating to advertising by electricians; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Advertising prohibited - Exceptions - Penalty.

1. Except as provided in this section, where an electrical license is required under section 43-09-09 or by local ordinance, no person offering electrical services may advertise as an electrical contractor, master electrician, or class B electrician unless the person employs a licensed journeyman electrician, or the person is a licensed master electrician or class B electrician. Any advertisement must contain the appropriate license number. This section does not apply to advertising purchased or contracted for prior to July 1, 1989.
2. a. A person violating this section is guilty of a class B misdemeanor for a first conviction, but no fine in excess of one hundred dollars and no term of imprisonment may be imposed.
b. A person violating this section is guilty of a class A misdemeanor for a second or subsequent conviction, but the penalties are as follows:
 - (1) For a second conviction, no fine in excess of one thousand dollars and no term of imprisonment may be imposed.
 - (2) For a third or subsequent conviction, a fine not to exceed one thousand dollars, or imprisonment not to exceed thirty days, or both, may be imposed.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 511

HOUSE BILL NO. 1413
(Frey, Graba, Gorman, Vander Vorst)

ELECTRICAL AND PLUMBING INSPECTOR LICENSING

AN ACT to create and enact a new section to chapter 43-09 and a new section to chapter 43-18 of the North Dakota Century Code, relating to license requirements for electrical and plumbing inspectors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Electrical inspectors - License required - Exception. A person employed by the state electrical board or a political subdivision to inspect electrical installations must be licensed as a journeyman or master electrician. This section does not apply to an inspector employed by the electrical board or a political subdivision as of the effective date of this Act.

SECTION 2. A new section to chapter 43-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Plumbing inspectors - License required - Exception. A person employed by the state board of plumbing or a political subdivision to inspect plumbing installations must be licensed as a journeyman or master plumber. This section does not apply to an inspector employed by the board of plumbing or a political subdivision as of the effective date of this Act.

Approved April 3, 1989
Filed April 3, 1989

CHAPTER 512

HOUSE BILL NO. 1111
(Committee on Industry, Business and Labor)
(At the request of the Electrical Board)

ELECTRICIANS' LICENSING AND EDUCATION

AN ACT to create and enact two new subsections to section 43-09-15 and a new section to chapter 43-09 of the North Dakota Century Code, relating to the licensing and education of electricians.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 43-09-15 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Failure to repay or enter into a written contract for repayment, under a payment schedule acceptable to the board, of money disbursed from the fund as provided under section 43-09-14, or failure to make timely payments under a payment contract entered into under the board's policy for administering the undertaking fund.

Failure to furnish certification of completion of continuing education as required under section 2 of this Act.

SECTION 2. A new section to chapter 43-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Continuing education. After March 31, 1990, each applicant for renewal of an electrician's license pursuant to section 43-09-15 must have successfully completed prior thereto at least four hours, and thereafter eight hours each biennium, of continuing education relating to the standards set forth in section 43-09-21 or as otherwise prescribed by the board. The board may not require more than sixteen hours of continuing education in each biennium. The board shall conduct education sessions for licensees each year at not less than six locations throughout the state. Attendance at such sessions, or attendance at other education sessions certified by the board as approved, fulfills the educational requirements of this section. The board may charge a fee to licensees for attendance at the education sessions at an amount to be determined by the board, but not to exceed ten dollars per person for each session.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 513

SENATE BILL NO. 2474
(Senators Maxson, Stenehjem)
(Representatives Aas, Wentz)

CREMATORIES, EMBALMERS, AND FUNERAL ESTABLISHMENTS

AN ACT to create and enact a new section to chapter 43-10 of the North Dakota Century Code, relating to licensing of crematories; and to amend and reenact sections 43-10-01, 43-10-02, 43-10-03, 43-10-04, 43-10-05, 43-10-06, 43-10-08, 43-10-10, 43-10-11, 43-10-11.1, 43-10-12, 43-10-13, 43-10-14, 43-10-15, 43-10-16, 43-10-17, 43-10-18, 43-10-19, 43-10-20, 43-10-22, and 43-10-23 of the North Dakota Century Code, relating to governing the licensing of embalmers and funeral directors, the practice of embalming, and the licensing of funeral establishments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-10-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-01. Definition of board. Whenever the word "board" is used in this chapter, unless the context otherwise ~~clearly~~ requires, it ~~shall mean~~ means the state board of embalmers funeral service.

SECTION 2. AMENDMENT. Section 43-10-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-02. State board of embalmers funeral service - Members - Appointment - Qualifications - Term of office - Oath - Vacancies. The state board of embalmers shall consist consists of the state health officer and three persons appointed by the governor. Each member appointed by the governor shall serve for a term of four years and until ~~his~~ a successor is appointed and qualified. The terms of office of the appointed members ~~shall~~ expire on the thirtieth day of June and ~~shall must~~ be so arranged that only one ~~shall expire~~ expires in any one year. The appointed members of the board ~~shall must~~ be persons practicing embalming in this state and must have practiced for a minimum of three years in North Dakota. Each member ~~of the board~~ shall qualify by taking the oath of office required of civil officers. The secretary of state may administer the oath and it shall be filed in ~~his~~ the office of the secretary of state. A vacancy on the board ~~shall must~~ be filled by appointment by the governor for the unexpired term.

SECTION 3. AMENDMENT. Section 43-10-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-03. Officers of board - Compensation of members - Treasurer's bond. The members of the board may elect from their number a president, a secretary, and a treasurer. The treasurer ~~shall must~~ be bonded for the faithful discharge of ~~his~~ the treasurer's duties in the sum of two thousand dollars. The members ~~of the board~~ shall receive their actual traveling

expenses which ~~shall~~ may not exceed the amount specified in section 54-06-09 and other necessary expenses and in addition the secretary shall receive one hundred dollars a year for his services.

SECTION 4. AMENDMENT. Section 43-10-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-04. Meetings of the board - Quorum. The board shall meet at least once a year, and may hold such special meetings as the proper and efficient discharge of its duties requires. ~~The time and place of the regular meeting and the hour and place of all special meetings shall be fixed by the rules and bylaws of the board.~~ Timely notice of all meetings shall be given to every member of the board, and to all applicants for license licensure. Three ~~of the members of the board shall~~ constitute a quorum for the transaction of business.

SECTION 5. AMENDMENT. Section 43-10-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-05. Power of board to adopt rules for transaction of business - Seal - License fees. The board may:

1. Adopt such ~~regulations~~ rules for the transaction of its business and the management of its affairs as it deems expedient and proper to administer this chapter.
2. Adopt and use a seal.
3. ~~Promulgate regulations~~ Adopt rules requiring ~~that~~ each funeral home, at the time of selection of merchandise and services from ~~such that~~ funeral home, to disclose in writing to the person or persons making the selection:
 - a. The total price at retail of the merchandise and services selected and a listing of what merchandise and services are included within such total.
 - b. The price at retail of each item of supplemental service or merchandise requested.
 - c. The amount of cash advances to the extent that the ~~same~~ advances are known or can be ascertained at the time of the selection.
 - d. The terms ~~by which of~~ payment for merchandise and services ~~is to be made~~.
4. Establish license and renewal fees for ~~embalmers~~ funeral service practitioners and funeral establishments within the limits imposed by this chapter.

SECTION 6. AMENDMENT. Section 43-10-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-06. Duty of board to adopt rules to prevent the spread of contagious diseases. The board shall adopt such rules ~~and regulations~~ as it ~~may deem~~ deems proper for the disinfection of a deceased person and of

bedding, clothing, apartments, or anything likely to be infected in case of death from a contagious or infectious disease. ~~Such The~~ rules ~~shall must~~ be made known ~~disclosed~~ to every person engaged in embalming and ~~the business of an undertaker~~ funeral service in this state.

SECTION 7. AMENDMENT. Section 43-10-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-08. Board to report to governor and ~~department of accounts and purchases office of management and budget~~. The board shall submit a biennial report as prescribed by section 54-06-04 to the governor and the ~~department of accounts and purchases office of management and budget~~.

SECTION 8. AMENDMENT. Section 43-10-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-10. License required. No person ~~shall may~~ embalm or prepare for burial, cremation, or shipment any dead human body unless he has a license to do so from the board or is under the direct supervision of a person who holds a license a dead human body or practice embalming or funeral service in this state unless that person is licensed by the board or under the direct supervision of a person licensed by the board.

SECTION 9. AMENDMENT. Section 43-10-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-11. Examination required - Application - Qualification. Any person who desires a license to practice embalming, funeral directing, or preparing dead human bodies for burial shall apply to the board and submit to an examination. The applicant shall submit with ~~his the~~ application proof that ~~he the applicant~~ has the following qualifications:

1. Is of good moral character.
2. Has such preliminary preparation and education as the rules and regulations of the board require.

SECTION 10. AMENDMENT. Section 43-10-11.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-11.1. Conviction not bar to licensure - Exceptions. Conviction of an offense ~~shall~~ does not disqualify a person from licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as ~~an embalmer a funeral service practitioner~~ or determines pursuant to under section 12.1-33-02.1 that the person, following conviction of any offense, is not sufficiently rehabilitated.

SECTION 11. AMENDMENT. Section 43-10-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-12. Examinations - Subjects covered - Written - Record. The examination for a license to practice ~~embalming funeral service~~ or preparing dead human bodies for burial or shipment ~~shall must~~ be in writing and ~~shall~~ must cover the following subjects:

1. Anatomy.

2. Embalming.
3. Bacteriology.
4. Chemistry.
5. Pathology.
6. Mortuary management.
7. Restorative arts.
8. ~~laws, rules and regulations~~ Rules of the state department of health and consolidated laboratories and the ~~state board of embalmers~~ governing the practice of embalming funeral service.
9. Other subjects that may be required by the board.

All examination papers ~~shall~~ must be kept of record by the board for a period of not less than three years.

SECTION 12. AMENDMENT. Section 43-10-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-13. License - When granted - Fee - Signed by majority of board - Nontransferable - Where displayed. The board shall grant a license to practice embalming funeral service or preparing dead human bodies for burial or shipment, if the applicant:

1. Has the required qualifications;
2. Has passed the required examination; and
3. Has paid to the treasurer of the board ~~the~~ a sum of not more than seventy-five dollars, as established by the board.

The license ~~shall~~ must be signed by a majority of the ~~members of the board and shall~~, be attested by ~~its~~ the board's seal, and ~~shall~~ specify by name the person to whom it is issued. A license ~~shall be is~~ nonassignable and nontransferable and ~~shall~~ must be displayed by the licensee in a conspicuous place in ~~his~~ the licensee's office or place of business.

SECTION 13. AMENDMENT. Section 43-10-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-14. License —~~Issued without examination by reciprocity. The board may issue a license to practice embalming or preparing dead human bodies for burial or shipment to an applicant who has not taken the examination if:~~

- ~~1- He holds a license to practice embalming issued to him by another state where the requirements for a license are equivalent to those of this state and where like privileges are accorded to holders of licenses issued in this state.~~
- ~~2- He pays the fee of not more than one hundred dollars, as established by the board.~~

A licenseholder in another state maintaining a system and standard of examination equivalent to this state may be issued a license after passing a written examination on questions concerning laws and rules of this state, upon payment of a fee established by the board and proof of good moral character.

SECTION 14. AMENDMENT. Section 43-10-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-15. License - Term - Renewal - Fee for renewal. ~~The~~ A license to practice ~~embalming~~ funeral service or preparing dead human bodies for burial ~~shall be issued is valid for one year only but shall~~ and may be renewed by the board upon the payment to the treasurer of the annual renewal fee ~~before December thirty-first of each year.~~ The amount of the fee shall ~~may not exceed fifty dollars. The board may refuse to renew the a~~ license for cause.

SECTION 15. AMENDMENT. Section 43-10-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-16. Grounds for revocation of license. The board may revoke or refuse to issue a license to practice ~~embalming~~ funeral service or preparing dead human bodies for burial, cremation, or shipment if the licensee:

1. Is unfit to practice ~~embalming~~ funeral service.
2. Has violated ~~any of the provisions of~~ this chapter or the rules ~~and regulations~~ of the board.

SECTION 16. AMENDMENT. Section 43-10-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-17. Revocation of license - When proceedings commenced - Hearing - Time. Whenever the board has reason to believe that a license issued under ~~the provisions of~~ this chapter should be revoked or whenever a ~~licensed embalmer files~~ written complaint is filed with the board a written complaint, substantiated by an affidavit, charging the holder of ~~an embalmer's a funeral service~~ license with a violation of any of the provisions of this chapter, the board shall notify the licensee of the charges made against ~~him~~ the licensee and shall set the time and place for a hearing on the charges. ~~The time of the hearing shall be may not be less than twelve forty-five days after the service of the notice of hearing.~~

SECTION 17. AMENDMENT. Section 43-10-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-18. Notice of hearing - Contents. The notice that charges have been filed against a licensed ~~embalmer shall~~ funeral service practitioner ~~must be served upon him that person~~ by registered or certified mail or personal service. If a written complaint is filed with the board, a copy ~~thereof shall of the complaint must be attached to and served with the notice.~~ The notice shall must specifically state:

1. The charges made against the licensee.
2. The time and place of the hearing.

SECTION 18. AMENDMENT. Section 43-10-19 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-19. Hearing - Revocation. A licensed ~~embalmer~~ funeral service practitioner against whom charges have been made under the provisions of section 43-10-16 may appear before the board at the time and place of the hearing and refute the charges made against ~~him~~. ~~Any member of the that person.~~ A board member may administer oaths to witnesses. If after considering the facts and circumstances, the board has sufficient reason to believe that the licensee is guilty of the charges made against ~~him~~ the licensee, it may revoke, suspend, or refuse to issue his a license.

SECTION 19. AMENDMENT. Section 43-10-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-20. Penalty. ~~Any A person who shall practice, practicing or hold himself out representing oneself as practicing, embalming funeral service, or who prepares preparing the dead for burial or shipment in violation of the provisions of this chapter, shall be is guilty of a class B misdemeanor.~~

SECTION 20. AMENDMENT. Section 43-10-22 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-22. Licensure of funeral establishments. ~~After January 1, 1964, no A person shall may not operate or manage, for himself or others, a funeral establishment without a funeral establishment license issued by the state board of embalmers for each place of business. No A funeral establishment shall may not be located on tax-exempt property. Any A person desiring to operate a funeral establishment shall submit an application for an annual license for each funeral establishment to the secretary or executive secretary of the board accompanied by a license fee for each establishment of not more than fifty dollars, as established by the board. Thereafter each A person operating or managing a funeral establishment shall annually, on or before December first, submit an application for renewal of such a license together with a renewal fee of not more than fifty dollars, as established by the board. Such licenses shall be A license is valid until the following January first, unless sooner revoked as hereinafter provided. All applications. An application must show that the funeral establishment sought to be licensed has complied with all rules and regulations promulgated adopted by the board in regard to safety and sanitation and will be under the supervision of a North Dakota licensed embalmer and funeral director. Any An applicant who has met these standards shall must be issued a license. In case of the death of an owner of a funeral establishment who leaves an established business as part or all of his an estate, the said board may issue a special renewable temporary license to the personal representative of the deceased person for the duration of the administration of the estate, but which shall in no instance may not exceed two years. The fee for such the temporary license shall be is the same as required for regular licenses. Any person operating a funeral establishment as defined in section 43-10-21, who is engaged in business at a fixed location in North Dakota on the date of approval of sections 43-10-21 through 43-10-24 may apply for and be entitled to a funeral establishment license on the same basis as would a currently licensed embalmer.~~

SECTION 21. AMENDMENT. Section 43-10-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10-23. Inspections - Hearings - Revocations - Appeal. The funeral establishment or that part ~~thereof~~ of a funeral establishment in which is conducted or intended to be conducted any funeral service business, ~~shall~~ must be open at all times for inspection by the board or the state department of health and consolidated laboratories. The board or agents employed by it and the state department of health ~~shall have the power to~~ and consolidated laboratories may make such inspections as are necessary of facilities and equipment of funeral establishments to ensure compliance with safety and sanitary ~~regulations promulgated rules~~ adopted by the board ~~of embalmers~~ or any other rules or federal regulations pertaining to funeral service whenever either deems the ~~same~~ inspection advisable. If, upon inspection, it is found that such ~~regulations rules~~ are not complied with, the board shall ~~give notice to~~ notify the holder of the funeral establishment license and hold hearings in the manner provided in sections 43-10-17, 43-10-18, and 43-10-19. The board may subpoena witnesses, administer oaths, and take testimony. All proceedings ~~hereunder shall~~ under this section must be conducted in accordance with ~~the provisions of~~ chapter 28-32. The board may, after ~~such a~~ hearing, revoke, suspend, or refuse to issue or renew ~~any such a~~ license upon good cause. ~~Any~~ A person aggrieved by the action of ~~said the~~ board may appeal to the district court of the county in which ~~he the person~~ resides or the district court of Burleigh County in accordance with ~~the provisions of~~ chapter 28-32.

SECTION 22. A new section to chapter 43-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Licensure of crematoriums. After July 1, 1989, a person may not operate a crematorium without a license issued by the board. A person desiring to operate a crematorium shall submit an application for an annual license to the board. The license fee may not exceed one hundred dollars and must be the same as a funeral establishment license.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 514

HOUSE BILL NO. 1425
(V. Olson)

CREMATED REMAINS DISPOSAL

AN ACT to provide for the disposition of stored cremated remains.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Disposition of stored cremated remains. Any cremated remains in the possession of a funeral home in this state that have not been claimed within twelve months after the time of cremation may be disposed of in accordance with this Act. At least thirty days prior to such disposition, any funeral home wishing to dispose of such remains shall send a written notice to the last known address of the responsible person who directed and provided for the method of final disposition of the human remains to the effect that such remains will be disposed of unless claimed by the person within thirty days from the date of mailing such notice. The notice must be sent by registered mail, return receipt requested.

SECTION 2. State board of embalmers to establish means of disposition. The state board of embalmers shall provide by rule for the appropriate means of disposition for cremated remains held by a funeral home that have not been claimed as provided in section 1 of this Act.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 515

HOUSE BILL NO. 1379
(Kneil)

ESTHETICIAN AND MANICURIST LICENSING

AN ACT to create and enact a new section to chapter 43-11 of the North Dakota Century Code, relating to the licensing of estheticians and manicurists; and to amend and reenact section 43-11-01 of the North Dakota Century Code, relating to definitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-11-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-01. Definitions. In this chapter, unless the context or subject matter thereof otherwise requires:

1. "Board" means the state board of cosmetology.
2. "Cosmetology" means any one or combination of practices generally and usually heretofore and hereafter performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding him or herself out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology shall be defined and shall include, but otherwise not be limited thereby, the following or any one or a combination of practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, beautifying or similar work on the scalp, face, neck, arms, hands, bust or upper part of the body, or manicuring the nails of any person.
3. "Cosmetology salon" includes that part of any building wherein the occupation of a cosmetologist is practiced.
4. "Demonstrator" means any person who possesses the qualifications of a cosmetologist and who is granted permission to promote a product or technique in this state for a limited time in accordance with rules adopted by the board.
5. "Esthetician" means a person who is licensed by the board to engage in the practice of skin care. An esthetician does not include a professional make-up artist trained in facial make-up application by a cosmetics company.

6. "Instructor" means any person of the age of eighteen years or more, who is a licensed cosmetologist, who teaches cosmetology or any practices taught in a duly registered school of cosmetology, and who has met the requirements of section 43-11-27 and has applied for and received an instructor's license.
- ~~6-~~ 7. "Manager-operator" means any person who has met the requirements of section 43-11-26 and has applied for and received a managing cosmetologist license.
8. "Manicuring" means the cleansing, cutting, shaping, beautifying, or massaging of the hands, feet, or nails of any person.
9. "Manicurist" means a person who is licensed by the board to engage in the practice of manicuring.
- ~~7-~~ 10. "Operator" means a person, not a student, who is licensed under the provisions of this chapter to engage in and follow any of the practices of a hairdresser or cosmetologist.
- ~~8-~~ 11. "School of cosmetology" means an establishment operated for the purpose of teaching cosmetology.
12. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, beautifying, or similar work on the scalp, face, neck, arms, hands, bust, or upper part of the body of any person.
- ~~9-~~ 13. "Student" means any person who is engaged in the learning or acquiring of any or all the practices of cosmetology and while so learning, performs or assists in any of the practices of cosmetology in any school registered or licensed and under the immediate supervision of an instructor licensed as such under this chapter.
- ~~10-~~ 14. "Student instructor" means a cosmetologist who is receiving instruction in teacher's training in a duly registered school of cosmetology.

SECTION 2. A new section to chapter 43-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Esthetician and manicurist licenses - Qualifications - Fees. The board may issue annual licenses for estheticians and manicurists. The board shall determine the qualifications for licensure and annual license fees for estheticians and manicurists.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 516

HOUSE BILL NO. 1288
(Rydell, Jensen, R. Berg, Scherber, Ulmer)

COSMETICS APPLICATION DEMONSTRATIONS

AN ACT to amend and reenact section 43-11-02 of the North Dakota Century Code, relating to exemptions from provisions governing cosmetologists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-11-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-02. Exemptions from provisions of chapter. This chapter does not apply to:

1. Services in case of emergency.
2. Services provided by persons practicing cosmetology upon members of their immediate families.
3. Services by persons authorized under the laws of this state to practice medicine, surgery, dentistry, podiatry, osteopathy, or chiropractic.
4. Services by nurses, undertakers, and morticians lawfully engaged in the performance of the usual and ordinary duties of their vocation; or by a licensed cosmetologist engaged in manicuring the nails of any person in a licensed barbershop.
5. Educational activities conducted in connection with any regularly scheduled meeting or any educational activities of any bona fide association of licensed cosmetologists, from which the general public is excluded. For purposes of this subsection a "bona fide association of cosmetologists" ~~shall mean~~ means any organization whose constitution, bylaws, or membership rules establish within said organization a class of membership consisting of licensed cosmetologists.
6. Services provided by retailers or their sales personnel trained in the demonstration of cosmetics application if the cosmetics are applied only with disposable applicators that are discarded after each customer demonstration. The board may adopt rules to ensure sanitary conditions for services provided under this exemption.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 517

SENATE BILL NO. 2394
(Senators Nalewaja, Dotzenrod)
(Representatives Rydell, Smette, Gilmore)

BOARD OF COSMETOLOGY MEMBER REMOVAL

AN ACT to amend and reenact section 43-11-03 of the North Dakota Century Code, relating to the state board of cosmetology.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-11-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-11-03. State board of cosmetology - Appointment - Term - Removal. The state board of cosmetology consists of three members appointed by the governor for three years each, with their terms of office so arranged that one term expires on June thirtieth of each year. Each member ~~of the board~~ shall qualify by taking the oath required of civil officers and shall hold office until a successor is appointed and qualified. The governor may remove from office a member for misconduct, malfeasance, neglect of duty in office, crime in office, gross incompetency, or habitual drunkenness. A vacancy on the board ~~shall~~ must be filled by appointment by the governor for the unexpired term.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 518

HOUSE BILL NO. 1295
(Representatives Gilmore, Kolbo, Haugland)
(Senators O'Connell, Richard, Lips)

BRUSH ROLLERS

AN ACT to create and enact a new section to chapter 43-11 of the North Dakota Century Code, relating to the use of brush rollers by licensed cosmetologists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Use of brush rollers authorized. A person licensed under this chapter may use brush rollers in the performance of cosmetology and hairdressing or hairsetting services if the rollers are cleaned and sanitized after each use in conformity with rules adopted by the board.

Approved April 7, 1989
Filed April 7, 1989

CHAPTER 519

HOUSE BILL NO. 1169
(Committee on Human Services and Veterans Affairs)
(At the request of the Board of Nursing)

NURSING BOARD AND LICENSING

AN ACT to amend and reenact section 43-12.1-02, 43-12.1-05, 43-12.1-07, 43-12.1-08, 43-12.1-10, 43-12.1-11, 43-12.1-13, and 43-12.1-14 of the North Dakota Century Code, relating to the definitions of licensee, the practice of nursing as a licensed practical nurse, the practice of nursing as a registered nurse, the terms of office of board of nursing members, the compensation of board members, the powers and duties of the board, requirements for licensure by examination, a license and when issued, and grounds for discipline; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-12.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of nursing.
2. "Licensed practical nurse" means one who has met all legal requirements for licensure and holds a current license to practice in this state as a licensed practical nurse.
3. "Licensee" means one who has met all the legal requirements for licensure and has been issued a license any person who has ever held a license, a temporary license, or a temporary permit to practice, or currently holds a license, a temporary license, or a temporary permit to practice as a registered nurse or a licensed practical nurse in this state.
4. The "practice of nursing as a licensed practical nurse" is defined as means the performance of those services, requiring the basic knowledge of biological science and technical skills, commonly performed by a licensed practical nurse under the direction of a registered nurse, licensed physician, or dentist for the purpose of:
 - a. The maintenance of health and prevention of illness.
 - b. The observation and nursing care of persons experiencing changes in their health processes.

- c. Administering prescribed medications and treatments.
 - d. Teaching and evaluating health practices of patients.
 - e. Providing specialized nursing care when such service is authorized by the board through its rules and regulations and delegated by a registered nurse, physician, or dentist, to a licensed practical nurse who has had additional preparation or experience.
5. The "practice of nursing as a registered nurse" is defined as means the performance of acts requiring the specialized knowledge, judgment, and skill based on principles of the biological, physical, behavioral, and social sciences in:
- a. The maintenance of health and prevention of illness.
 - b. Diagnosing human responses to actual or potential health problems.
 - c. Providing supportive and restorative care, health counseling and teaching, case finding and referral of persons who are ill, injured, or experiencing changes in the normal health processes.
 - d. Administration, teaching, supervision, delegation, and evaluation of health and nursing practices.
 - e. Collaboration in the implementation of the total health care regimen and execution of a medical regimen as prescribed or authorized by a licensed physician or dentist and the
 - f. The performance of such additional acts which are recognized by the nursing profession, in connection with the medical profession, as proper to be performed by registered nurses who have had additional specialized preparation and are authorized by the board through its rules and regulations to perform such acts.
6. "Registered nurse" means one who has met all legal requirements for licensure and holds a current license to practice in this state as a registered nurse.

SECTION 2. AMENDMENT. Section 43-12.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-05. Board of nursing - Composition - Term of office. There shall be a state board of nursing whose members shall be appointed by the governor which shall consist of five registered nurses, three licensed practical nurses, and one public member. Each board member shall be appointed for a term of ~~three~~ four years. No appointee shall be appointed for more than two consecutive terms. An appointment for an unexpired term of more than eighteen months will constitute a full term. The term of the public member must coincide with that of the governor. Terms of licensed nurse board members must be evenly distributed to allow two licensed nurse board members to be appointed or reappointed each year. Two of the licensed

nurse board member terms expiring June 30, 1989, must be filled by appointment or reappointment for terms of three years to provide for even distribution of terms of licensed nurse board members.

SECTION 3. AMENDMENT. Section 43-12.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-07. Compensation of board members. In addition to the expenses incurred while engaged in the performance of the duties of his office, each board member shall receive a per diem fee ~~set by the board~~ not to exceed ~~fifty dollars~~ the compensation allowed members of the legislative assembly for each day of service under section 54-03-20.

SECTION 4. AMENDMENT. Section 43-12.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-08. Powers and duties of the board. The board shall:

1. Maintain an office to conduct business.
2. Employ an executive director and such other professional and secretarial staff as may be required.
3. Establish fees and receive all moneys collected under this chapter.
4. Authorize all expenditures necessary for conducting the business of the board. Any balance of such fees after payment of expenditures is to be used in administering the provisions of this chapter.
5. Report all receipts and expenditures of said funds at the close of each fiscal year to the governor.
6. Establish standards for all nursing education programs or acknowledge programs accredited by national nursing accrediting agencies.
7. Conduct surveys as necessary of nursing education programs required to meet board standards.
8. Approve such nursing education programs which meet board standards.
9. Conduct a licensing examination at least once a year for entry into practice as a registered nurse or licensed practical nurse.
10. License candidates who qualify by examination or endorsement as registered nurses or licensed practical nurses.
11. Maintain a permanent register of the names of all persons to whom licenses to practice as a registered nurse or a licensed practical nurse are issued. Such register shall be open to public inspection.
12. Renew licenses periodically.
13. ~~Promulgate~~ Adopt rules and regulations pursuant to under chapter 28-32 for renewal of licenses after an absence of five years from the active practice of nursing.

14. Discipline licensees as necessary.
15. Establish standards for quality of practice for registered nurses and licensed practical nurses after consultation with the North Dakota state nurses association, the North Dakota licensed practical nurses association, and other professional nursing groups.
16. Establish standards for quality of practice for registered nurses and licensed practical nurses functioning in specialized roles after consultation with the North Dakota state nurses association, the North Dakota licensed practical nurses association, and other recognized nursing specialty groups.
17. Execute any legitimate project pertaining to nursing education or practice.
18. ~~Promulgate and adopt~~ Adopt such rules and regulations pursuant to under chapter 28-32 as are necessary to carry out the provisions of this chapter. The board shall involve active participation of all appropriate state education agencies and representatives of public and proprietary institutions which are involved in and responsible for funding or operation of such programs, in the establishment of such standards and approval of programs.
19. Issue temporary licenses to persons who do not meet the educational qualifications in section 43-12.1-12 but meet all other requirements. A temporary license may be issued only once and may be renewed for a period not to exceed two consecutive years for a temporary practical nurse license or four consecutive years for a temporary registered nurse license. The board by administrative rule may identify the requirements for renewal of the temporary license each year based upon progress towards meeting the educational requirements identified in section 43-12.1-12.
20. Conduct public hearings before adopting any rules and regulations or standards.

SECTION 5. AMENDMENT. Section 43-12.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-10. License by examination. Any person who desires to practice as a registered nurse or licensed practical nurse in this state shall be required to write and pass the licensing examination given by the board. Such persons shall file a certified written application for license by examination at least thirty days before the examination accompanied by the prescribed fee and submit satisfactory proof of having the following qualifications:

- 1- Satisfactory completion of the appropriate nursing education program in another country or the appropriate nursing education program approved by a board of nursing in the United States.
- 2- Recommended to the board by the nursing faculty of the completed nursing education program.

A temporary permit to engage in the practice of nursing in the state of North Dakota may be issued by the North Dakota board of nursing to an applicant from the United States or Canada who gives evidence of intention to engage in the practice of nursing in North Dakota between the dates of graduation and notification of the results of the first licensing examination for which the applicant is eligible within the state of North Dakota. The temporary permit for the graduate shall expire upon notification of the results of the first licensing examination.

The board may issue a license to practice as a registered nurse or a licensed practical nurse to an applicant for license by examination if the applicant:

1. Shows evidence of satisfactory completion of the appropriate nursing education program approved by the board or completion of a nursing education program located in another country or approved by another board of nursing which meets or exceeds the standards for registered or practical nursing programs in North Dakota.
2. Has submitted a completed application and fee for licensure by examination and has written and passed the licensing examination given by the board.
3. Is a resident of North Dakota, or has accepted employment in North Dakota or with a federal agency.

Authorization to practice nursing between the dates of graduation and notification of the results of the first licensing examination for which the candidate is eligible, may be issued by the board to a candidate who meets requirements set by the board.

SECTION 6. AMENDMENT. Section 43-12.1-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-11. License - When issued. Upon satisfactory completion of the licensing examination for registered nurses or licensed practical nurses, the board shall issue a license to practice. A current license to practice will be issued upon proof that the applicant meets all requirements for licensure and is a resident of North Dakota or upon verification of employment in North Dakota or a federal agency.

SECTION 7. AMENDMENT. Section 43-12.1-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-13. Renewal of license. The board shall renew nursing licenses periodically and may ~~promulgate~~ adopt rules and regulations pursuant to chapter 28-32, after consultation with duly organized professional nursing organizations recognized by the state board of nursing and with employers of nurses, to determine eligibility for renewal of license before reissuing such licenses. Upon meeting board requirements for renewal of license and paying the renewal fee as set by the board, a current license will be issued. Any person holding a license to practice nursing as a registered nurse or a licensed practical nurse issued by the board which is valid on July 1, 1977, shall thereafter be deemed to be licensed as a registered nurse or licensed practical nurse under the provisions of this chapter. If a registered nurse or a licensed practical nurse fails to renew

his a license by January first of the appointed year, the license may be reinstated if the licensee meets the requirements set by the board. Any nurse who voluntarily placed his name on the roster of inactive nurses between the years 1957 to July 1, 1977, may be relicensed by meeting board requirements for renewal of license.

SECTION 8. AMENDMENT. Section 43-12.1-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-12.1-14. Grounds for discipline - Penalties. The board shall have the power to discipline licensees as necessary by reprimanding the licensee, placing the licensee on probationary status, denying, suspending, or revoking a license or permit to practice nursing issued in accordance with this chapter, if the person is found:

1. To be guilty of fraud or deceit in procuring or attempting to procure a license or permit to practice nursing.
2. To have had a license to practice nursing suspended or revoked in another jurisdiction which has not been reinstated.
3. To have been convicted of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a nurse, or when the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
4. To be guilty of unprofessional conduct likely to deceive, defraud, or harm the public.
5. To be practicing nursing incompetently by reason of negligent acts.
6. To be mentally or physically unsafe for nursing practice.
7. To be guilty of willfully and repeatedly violating the provisions of this chapter practicing as a registered nurse or a licensed practical nurse unless currently licensed to do so.

Any person may file a written sworn complaint with the executive director of the board, charging a licensee with having committed any of the actions specified as grounds for discipline. ~~The boards shall fix a time and place for a hearing.~~ All written complaints filed with the board will be investigated according to board rules. If the investigation reveals grounds to support the charges made against the licensee, the executive director of the board will initiate the hearing procedure in accordance with chapter 28-32. The board shall fix a time and place for a hearing. If the licensee is found to have committed any of the charges in the complaint, the board may reprimand the licensee, place the licensee on probationary status subject to reasonable terms of probation, deny, suspend, or revoke a license. In addition, if the respondent is found by the board to have committed any of the acts set out in this section for which discipline may be imposed, the board may tax costs and disbursements against the respondent as in civil actions, and may further impose a penalty fee if the respondent is found by the board to have committed any of the acts set out in subsections 1 through 4 of section 43-12.1-15 or subsection 7 of this section. Any fee, costs, and disbursements imposed by the board against the respondent may be

paid within a reasonable time and through reasonable periodic payments as specified in the board's order. Any penalty fee imposed may not exceed five dollars for each day or fraction of a day in which the respondent is found by the board to have committed any of the prohibited acts as set out herein, and may not exceed a total of one thousand dollars. A suspended license may be reinstated at any time by the board. A revoked license may be reissued after one year at the board's discretion. An appeal from the final decision of the board may be taken to the district court of Burleigh County in accordance with the provisions of chapter 28-32. The board shall furnish to the boards of nursing of other states, and to health agencies of this state, a list of the names and addresses of licensees who have been disciplined by the board.

SECTION 9. EFFECTIVE DATE. Sections 5 and 8 of this Act become effective immediately upon its filing with the secretary of state and sections 1, 2, 3, 4, 6, and 7 of this Act become effective July 1, 1989.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 520

HOUSE BILL NO. 1186
(Committee on Industry, Business and Labor)
(At the request of the Board of Optometry)

OPTOMETRIST LICENSING AND DISCIPLINE

AN ACT to create and enact three new sections to chapter 43-13 of the North Dakota Century Code, relating to optometry board disciplinary powers and board immunity and impaired optometrists; and to amend and reenact sections 43-13-02, 43-13-03, 43-13-04, 43-13-06, 43-13-07, 43-13-11, 43-13-12, 43-13-13, 43-13-15, 43-13-16, 43-13-17, 43-13-18, 43-13-19, 43-13-20, 43-13-21, 43-13-22, 43-13-23, 43-13-24, 43-13-25, 43-13-26, 43-13-28, and 43-13-31 of the North Dakota Century Code, relating to licensing of optometrists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-13-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-02. Persons exempt from provisions of chapter. The provisions of this chapter shall not apply to the following persons:

1. Persons who sell spectacles, eyeglasses, or other articles of merchandise without attempting to practice optometry.
2. Student practitioners interns who are currently enrolled in an optometry school or college accredited by the council on optometric education of the American optometric association, or who have graduated no more than three months prior, and are under the immediate and direct supervision of a registered licensed optometrist.
3. Physicians and surgeons authorized to practice medicine in this state, except that the provisions of section 43-13-28 shall remain applicable.

SECTION 2. AMENDMENT. Section 43-13-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-03. North Dakota state board of optometry - Members - Appointment - Qualifications - Terms of office - Oath - Vacancies. The North Dakota state board of optometry shall consist of seven members appointed by the governor for a term of five years each, with their terms of office so arranged that at least one term shall expire on June thirtieth of each year. Five of the members of the board shall be resident registered licensed optometrists who have an established optometric practice in this state and who are members in good standing of the North Dakota optometric association engaged in the actual practice of optometry in this state. Each member of the board shall qualify by taking the oath required of civil officers and

filing the same with the secretary of the board. A member of the board shall hold ~~his~~ office until ~~his~~ a successor is appointed and qualified. A vacancy on the board shall be filled by appointment by the governor for the remainder of the unexpired term.

SECTION 3. AMENDMENT. Section 43-13-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-04. Officers of board - Election - Term of office - Duty of president. The members of the board shall elect from among their own number a president and a secretary. Such officers shall hold office for the term of one year, and until their successors are elected and qualified. The president of the board shall preside at all meetings of the board and shall sign on behalf of the members all ~~certificates~~ licenses or other instruments issued by the board. Such ~~certificates~~ licenses or instruments shall be attested by the secretary.

SECTION 4. AMENDMENT. Section 43-13-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-06. Secretary of board - Bond. The secretary of the board shall be bonded for the faithful discharge of ~~his~~ duties in such amount as may be prescribed by the board.

SECTION 5. AMENDMENT. Section 43-13-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-07. Compensation and expenses of board members. A member of the board shall receive as compensation for each day ~~he~~ the member actually is engaged in performing the duties of ~~his~~ office a per diem as established by the board, mileage and travel expenses as are provided for in section 54-06-09, and additional allowance for other necessary expenses incurred in attending said meeting not to exceed five dollars per day. All funds collected or received by the board shall be deposited and disbursed in accordance with section 54-44-12.

SECTION 6. AMENDMENT. Section 43-13-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-11. Records of board. The record of the proceedings of the board kept by the secretary, at all reasonable times, shall be open to public inspection. Such record also shall contain, under permanent binding, a registry list of all persons ~~registered~~ licensed by the board, together with renewals and revocations of ~~certificates~~ licenses. The record shall constitute the official registry of all persons licensed to practice optometry in this state.

SECTION 7. AMENDMENT. Section 43-13-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-12. Records of board as evidence. A true copy of all records of the board, or any part thereof, shall be admissible in evidence without further proof of authenticity when accompanied by the certificate of the secretary of the board that the same is a true copy of the original record on file in ~~his~~ the office ~~as~~ of the secretary of the board.

SECTION 8. AMENDMENT. Section 43-13-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-13. Duties of board. The board shall have the following duties:

1. To enforce the provisions and carry out the purposes of this chapter.
2. To make and enforce such rules and regulations ~~not inconsistent~~ consistent with law as may be necessary for the proper performance of its duties; the effective enforcement of this chapter; ~~and;~~ the reasonable regulation of the profession of optometry and the practice thereof by persons licensed under this chapter; and to protect the health, welfare, and safety of the citizens of this state.
3. To proceed in the courts of this state by injunction when considered necessary to restrain any violation of this chapter.

SECTION 9. AMENDMENT. Section 43-13-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-15. Unlawful to practice without ~~certificate~~ license - Sale of glasses - Regulations. No person shall practice optometry in this state unless ~~he~~ the person first obtains a certificate of registration license and complies with the requirements of this chapter. Eyeglasses, spectacles, and lenses shall be vended as merchandise only:

1. To dealers.
2. From permanently located and established places of business in this state.

Any registered licensed optometrist, however, may fit and vend eyeglasses, spectacles, and lenses at any place in this state. Notwithstanding any other provision of law, it is unlawful for any person, or any entity other than a licensed optometrist or a licensed physician to dispense, fit, or prescribe to the public contact lenses, or any medical appliance having direct contact with the cornea of the eye.

SECTION 10. AMENDMENT. Section 43-13-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-16. Examination required - When given. Before any person is granted a certificate of registration license to practice optometry in this state, ~~he~~ the person ~~shall~~ must pass an examination given by the board. The examination may be conducted by ~~two~~ four or more of the professional members of the board at such times and places as are prescribed by it.

SECTION 11. AMENDMENT. Section 43-13-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-17. Application for examination - Contents - Educational requirements - Fee for examination. Any person desiring to take the examination for a certificate of registration license to practice optometry in this state shall file with the secretary of the board, at least five days before the date of the examination, a written application for examination.

The application shall be accompanied by the affidavits of two freeholders of this state to the effect that the applicant is of good moral character. The applicant also shall furnish satisfactory proof that ~~he~~ the applicant:

1. Is at least eighteen years of age;
2. Has attended high school for four years or has the equivalent of such an education; and
3. Is a graduate of an optometry school or college accredited by the council on optometric education of the American optometric association.

Before beginning the examination, the applicant shall pay to the secretary of the board ~~the~~ a sum of forty fixed by the board, but not to exceed two hundred dollars.

SECTION 12. AMENDMENT. Section 43-13-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-18. When examination not required. An applicant may secure a certificate of registration license to practice optometry in this state without taking the required examination ~~if~~ upon:

1. ~~He presents~~ Presentation of a certified copy or an original certificate of registration or license issued to him by another state where the requirements for registration license are equivalent to those of this state and where like privileges are accorded to holders of certificates licenses issued in this state; and
2. ~~He pays the fee of twenty-five~~ Payment of a sum fixed by the board, but not to exceed two hundred dollars.

The board may give a practical examination to the applicant if it is deemed necessary.

SECTION 13. AMENDMENT. Section 43-13-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-19. Certificate License - When issued - Fee - Failure to pass examination - Reexamination. Every applicant for a certificate of registration license to practice optometry in this state who successfully passes the examination given by the board shall receive a certificate of registration license and shall be ~~registered~~ licensed upon ~~the~~ payment to the secretary of the board ~~of~~ the sum of twenty-five dollars. If the applicant fails to pass the first examination, within fourteen months thereafter, ~~he~~ the applicant may have another examination upon the payment of ~~the sum of five dollars~~ fifty percent of the current application fee. The examination shall be given at such time and place as may be designated by the board.

SECTION 14. AMENDMENT. Section 43-13-20 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-20. Term of certificate license - Renewal - Annual license fee - Continuing educational requirements. A certificate of registration license to practice optometry in the state shall be issued for one year only, but may

be renewed by paying to the secretary of the board, during the month of January of each year, the license fee for that year, and as of January 1, 1974, by submitting satisfactory proof to the board that within the preceding three-year period the applicant has attended optometric educational programs as required by the board. The board shall grant an applicant an additional year in which to attend such education programs if an applicant furnishes the board with sufficient proof that ~~he~~ the applicant has been unable to attend such education programs during a year, which proof shall include a physician's certificate stating that the applicant was ill and that it would have been hazardous to the applicant's health to attend such educational programs. The license fee for each year shall be determined annually by the North Dakota state board of optometry and shall not exceed ~~one~~ two hundred dollars. The board shall adopt reasonable rules which shall state the type of optometric educational programs which are approved. The board shall also designate the number of classroom hours which must be attended, which shall not exceed ~~thirty-six~~ sixty within each three-year period. Any person who does not meet these requirements by February first of the year in which the license fee becomes due and payable shall be in default and may be reinstated by the board upon the payment of an additional sum of twenty-five dollars, and upon the acceptance by the board of satisfactory evidence that the person has sufficiently attended approved optometric educational programs, and upon the compliance with other reasonable conditions the board may impose. Nothing contained herein shall require an applicant to become a member of the North Dakota optometric association or any other association of optometrists.

SECTION 15. AMENDMENT. Section 43-13-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-21. Certificate License to be displayed. Every person to whom a certificate of registration license to practice optometry in this state is issued shall display the same in a conspicuous place in ~~his~~ the office where the practice of optometry is conducted.

SECTION 16. AMENDMENT. Section 43-13-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-22. Certificate of registration License - When revoked. The board may revoke or suspend any certificate of registration license granted by it under the provisions of this chapter when it appears to the satisfaction of the majority of the members that the holder of the certificate license:

1. Has been convicted of a violation of violated any provisions of this chapter, the rules and regulations of the board, or of committed an offense determined by the board to have a direct bearing upon a holder's ability to serve the public as an optometrist, or when the board determines, following conviction of a holder for any other offense, that the holder is not sufficiently rehabilitated under section 12.1-33-02.1;
2. Is an habitual drunkard;
3. Has prescribed, sold, administered, distributed, or given any drug legally classified as a controlled substance or as an addictive or dangerous drug;

- ~~3.~~ 4. Has been addicted to the excessive use of intoxicating liquor or ~~narcotic drugs~~ a controlled substance for at least six months immediately prior to the filing of the charges;
- ~~4.~~ 5. Is permanently afflicted with any contagious or infectious disease;
- ~~5.~~ 6. Is grossly incompetent to discharge ~~his~~ the holder's duties in connection with the practice of optometry;
- ~~6.~~ 7. Has employed fraud, deceit, misrepresentation, or fraudulent advertising in the practice of optometry; or
- ~~7.~~ 8. Is engaged in the practice of optometry by being directly or indirectly employed by any person other than one who holds a valid unrevoked ~~certificate~~ license as an optometrist in this state and who has an actual legal residence within this state.

Any person whose ~~certificate~~ license has been revoked or suspended may have the same reinstated upon satisfactory proof that the disqualification has ceased or that ~~his~~ the disability has been removed.

SECTION 17. AMENDMENT. Section 43-13-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-23. Revocation of ~~certificate~~ license - Notice. Before a ~~certificate of registration~~ license to practice optometry in this state shall be revoked or suspended, the secretary of the board shall give the holder of the ~~certificate~~ license notice by registered or certified mail to appear before it to answer the charges ~~against him~~. The notice shall specify the time and place of hearing which shall be at least ten days subsequent to the date the notice was mailed. A copy of the charges shall be attached to and served upon the holder of the ~~certificate~~ license as a part of the notice.

SECTION 18. AMENDMENT. Section 43-13-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-24. Revocation of ~~certificate~~ license - Hearing - Procedure - Witnesses - Expenses. At the hearing of the charges against the holder of a ~~certificate of registration~~ license to practice optometry in this state, the secretary of the board shall read the charges to the accused, if ~~he is~~ present, and the accused shall state whether ~~he is~~ guilty or not guilty thereof. If the accused denies the charges, evidence shall be received by the board from competent witnesses under oath as to their truth. The accused may examine the witnesses ~~himself~~ or ~~by his~~ have an attorney present, and may produce evidence in ~~his own~~ the accused's behalf. The board may compel the production of testimony and the attendance of witnesses from any point within the state and may employ an attorney to represent it. All expenses incurred in conducting the hearing shall be paid by the secretary on order of the board out of the funds in the board's custody.

SECTION 19. AMENDMENT. Section 43-13-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-25. Determination of board constitutes revocation of ~~certificate~~ license. The board shall review the evidence at the conclusion of the hearing of charges against the holder of a ~~certificate of registration~~ license to practice optometry in the state, and shall enter upon its records

a determination as to whether the accused is guilty of one or more of the charges made against him. If he the accused is found guilty, the determination as recorded shall constitute a revocation or suspension of his certificate the license as determined by the board. If the accused fails to appear at the hearing or if he pleads guilty to one or more of the charges made against him, the secretary shall enter that fact upon the records of the board. Such record shall constitute a determination of guilt and shall effect the revocation of the certificate of registration license of the accused.

SECTION 20. AMENDMENT. Section 43-13-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-26. Revocation of certificate license - Appeal. Upon the revocation or suspension of any certificate of registration license to practice optometry in this state, the holder, within thirty days, may appeal to the district court of the county within which the accused resides. Such appeal shall be taken in accordance with chapter 28-32. The secretary of the board shall send the files and a copy of the minutes of the proceedings of the board in said matter to the clerk of the district court to which the appeal is taken, and such minutes and files shall constitute the record on appeal.

SECTION 21. A new section to chapter 43-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

Disciplinary powers of the board.

1. In addition to any other disciplinary actions available to the board, the board may take one or more of the following actions against an optometrist who violates the provisions of this chapter or the board's rules:
 - a. Letters of concern.
 - b. Letters of censure.
 - c. Reprimands.
 - d. Fines, including costs and attorney's fees.
 - e. Stipulations, limitations, and conditions relating to practice such as additional education and counseling.
 - f. Probation.
 - g. Suspension of the license.
 - h. Revocation of the license.
2. The board may require a licensee to be examined on optometric knowledge and skills, if the board has just cause to believe the licensee may be so deficient in knowledge and skills as to jeopardize the health, welfare, and safety of the citizens of this state.

3. The board may require a physical or mental evaluation as provided in section 43-13-26.2 if it has reason to believe the licensee's physical or mental condition may adversely affect the public welfare.

SECTION 22. A new section to chapter 43-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

Impaired optometrists. The board may restrict, suspend, or revoke the license of any licensed optometrist whose mental or physical ability to practice optometry with reasonable skill and safety is impaired.

1. For the purpose of this section, "impairment" means the inability of a licensee to practice optometry with reasonable skill and safety by reason of:
 - a. Mental illness; or
 - b. Physical illness, including physical deterioration that adversely affects cognitive, motor, or perceptive skills.
2. The board may, upon probable cause, require a licensee or applicant to submit to a mental or physical examination by appropriate health care providers designated by the board. The results of the examination are admissible in any hearing before the board, despite any claim of privilege under any contrary rule or statute. Every person who receives a license to practice optometry or who files an application for a license to practice optometry is deemed to have given consent to submit to the admissibility of the results in any hearing before the board. If a licensee or applicant fails to submit to an examination when properly directed to do so by the board, unless the failure was due to circumstances deemed to be beyond the licensee's control, the board may enter a final disciplinary order upon proper notice, hearing, and proof of such refusal.
3. If the board finds, after examination and hearing, that a licensee is impaired, it may take one or more of the following actions:
 - a. Direct the licensee to submit to care, counseling, or treatment acceptable to the board; and
 - b. Suspend, limit, or restrict the optometrist's license for the duration of the impairment.
4. Any licensee or applicant who is prohibited from practicing optometry under this section shall be afforded an opportunity, at reasonable intervals, to demonstrate to the satisfaction of the board that the licensee or applicant can resume or begin the practice of optometry with reasonable skill and safety. Licensure will not be reinstated without the payment of fifty percent of the current license fee and may be subject to such reasonable restrictions as may be imposed by the board.

SECTION 23. AMENDMENT. Section 43-13-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-28. Prohibitions. It shall be unlawful for any corporation, organization, association, group, or individual who is not ~~himself~~ the holder of a ~~certificate~~ license to practice optometry, to engage in the practice of optometry, directly or indirectly, by employing or hiring upon a salary, commission, or other basis or by associating upon a lease or any other profit sharing arrangement with a licensed optometrist or licensed physician. The provisions of this section shall not apply to cooperative or to nonprofit associations or nonprofit corporations.

SECTION 24. AMENDMENT. Section 43-13-31 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-13-31. Discrimination in optometric services prohibited. A person may not discriminate between licensed practitioners of optometry and physicians, or interfere with any individual's right to free choice of ocular practitioner, with respect to the providing of professional services within the scope of section 43-13-01. If a ~~group~~ health, accident or disability policy or insurance contract, or any other type of ~~employee group~~ benefit or safety program specifically provides for the payment of optometric services within the scope of section 43-13-01, the payment must be made regardless of whether the service is performed by a physician or optometrist. ~~This section does not apply to medical service contracts written by nonprofit health service corporations.~~

SECTION 25. A new section to chapter 43-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

Board immunity and privileged communications.

1. No member of the board, its committees, its employees, or its staff is liable for civil damages or subject to, criminal prosecution for any action undertaken or performed within the scope of the functions of the board under this chapter and the rules of the board when acting without malice or gross negligence and in the reasonable belief the action was warranted.
2. Every communication, oral or written, made by or on behalf of any person, institution, agency, or organization to the board or to any person designated by the board to investigate or otherwise hear matters relating to any disciplinary action, whether by way of report, complaint, or testimony, is privileged. No action or proceeding, civil or criminal, is permitted against any such person, institution, agency, or organization by whom or on whose behalf such a communication was made, except upon proof that the communication was made with malice.
3. The protections afforded in this section do not prohibit a respondent or a respondent's legal counsel from exercising the respondent's constitutional right of due process under the law, or as prohibiting the respondent from normal access to the charges and evidence filed against the respondent as part of due process under the law.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 521

SENATE BILL NO. 2194
(Committee on Industry, Business and Labor)
(At the request of the Board of Pharmacy)

NORTH DAKOTA PHARMACEUTICAL ASSOCIATION

AN ACT to create and enact six new sections to chapter 43-15 of the North Dakota Century Code, relating to membership in the North Dakota pharmaceutical association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Six new sections to chapter 43-15 of the North Dakota Century Code are hereby created and enacted to read as follows:

North Dakota pharmaceutical association - How governed. The North Dakota pharmaceutical association shall operate under the articles of incorporation filed on December 14, 1886, bylaws adopted at the annual meetings of the association, and amendments thereof duly adopted under the provisions of the articles of incorporation and bylaws.

Membership of North Dakota pharmaceutical association. The membership of the North Dakota pharmaceutical association consists of every person:

1. Who has secured a current annual certificate of registration to practice pharmacy in this state in accordance with this chapter.
2. Who has paid an annual membership fee directly to the association as determined and permitted by the association and who does not hold a current certificate of registration to practice pharmacy in this state.

Rights of members of pharmaceutical association. The members of the association who have secured a current annual certificate of registration to practice pharmacy in this state are entitled to all of the rights and privileges of the association and may vote, serve as an officer or director of the association, and participate in all of the meetings of the association. The members of the association who have not secured a current annual certificate of registration to practice pharmacy in this state are entitled to all of the rights and privileges of the association, except that they may not vote at the meetings or serve as an officer or director of the association.

Moneys payable from board of pharmacy to North Dakota pharmaceutical association. The association shall annually receive fifty percent of fees received by the board for renewal certificates of registration as a pharmacist in this state. The association may use the funds for payment of expenses of the association including continuing pharmaceutical education, pharmacist discipline, the impaired pharmacist program, matters related to pharmacist registration standards, professional service standards, and

general operating expenses. The amount provided in this section must be paid quarterly to the association by the board. The association may not receive from the board any portion of fees from out-of-state pharmacists who do not have a renewal certificate of registration to practice pharmacy in this state and may not receive any portion of examination fees, permit fees, or other fees or funds not specified in this section.

Method of expenditure of association's funds - Annual report of receipts and disbursements. Expenditures of funds from the board to the association must be approved by the president and executive secretary-treasurer of the association. The executive secretary-treasurer of the association shall annually file in the office of the board an itemized statement of the receipts from the board and disbursements from the receipts.

No liability upon state created by provisions of chapter. The provisions of this chapter do not create any liability on the part of the state in excess of the payment made out of the board funds as provided in this Act.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 522

SENATE BILL NO. 2203
(Committee on Industry, Business and Labor)
(At the request of the Board of Pharmacy)

PHARMACY OR PHARMACIST SUSPENSION

AN ACT to create and enact a new section to chapter 43-15 of the North Dakota Century Code, relating to temporary suspension of a pharmacy permit or a certificate of registration of a pharmacist; to repeal section 43-15-28 of the North Dakota Century Code, relating to cancellation of certificate of registration; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

Temporary suspension - Appeal.

1. If the board has verified evidence that probable cause or grounds for discipline requires the suspension of a pharmacy permit or certificate of registration of a pharmacist and where harm to the public is so imminent and critical that substantial harm could or would likely result if the permit or certificate is not suspended prior to a hearing, the board may order a temporary suspension ex parte.
2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.
3. The board shall set the date of a full hearing on the cause and grounds for discipline regarding the permit or certificate of registration for not later than sixty days from the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order the board shall serve the pharmacy or pharmacist with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.
4. The pharmacy or pharmacist may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether probable cause or grounds for discipline reasonably requires the temporary suspension to adequately protect the public interest. The court shall give priority to the appeal for prompt disposition.

SECTION 2. REPEAL. Section 43-15-28 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 523

HOUSE BILL NO. 1585
(Representatives Aas, Tollefson)
(Senator Schoenwald)

WHOLESALE DRUG DISTRIBUTORS

AN ACT to provide for regulation of wholesale drug distributors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Board" means the state board of pharmacy.
2. "Manufacturer" means any person engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug.
3. "Pharmacy distributor" means any pharmacy licensed in this state or hospital pharmacy that is engaged in the delivery or distribution of prescription drugs either to any other pharmacy licensed in this state or to any other person or entity, including a wholesale drug distributor, engaged in the delivery or distribution of prescription drugs and involved in the actual, constructive, or attempted transfer of a drug in this state to other than the ultimate consumer, where the financial value of the drugs is equivalent to at least five percent of the total gross sales of the pharmacy distributor.
4. "Prescription drug" means any drug required by federal or state law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the federal Food, Drug and Cosmetic Act.
5. "Wholesale drug distribution" means sale of prescription drugs to persons other than a consumer or patient. The term does not include:
 - a. Intracompany sale, which is a sale between any division, subsidiary, parent, or affiliated or related company under the common ownership and control of a corporate entity.
 - b. The purchase or other acquisition by a hospital pharmacy or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospital pharmacies or health care entities that are members of such organizations.

- c. The sale, purchase, or trade of a drug, or an offer to sell, purchase, or trade a drug, by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law.
 - d. The sale, purchase, or trade of a drug, or an offer to sell, purchase, or trade a drug, among hospital pharmacies or other health care entities that are under common control.
 - e. The sale, purchase, or trade of a drug, or an offer to sell, purchase, or trade a drug, for emergency medical reasons.
 - f. The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription.
 - g. A transfer of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.
 - h. A manufacturer or a manufacturer's sales representative or agent.
6. "Wholesale drug distributor" means any person engaged in the wholesale drug distribution, including manufacturers; repackers; own-label distributors; jobbers; brokers; warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; sales agents; prescription drug repackagers; physicians; dentists; veterinarians; birth control and other clinics; individuals; hospital pharmacies; nursing home pharmacies or their providers; health maintenance organizations and other health care providers; and retail and hospital pharmacies that conduct wholesale distributions. The term does not include any common carrier or individual hired solely to transport prescription drugs.

SECTION 2. Prohibited drug purchases or receipt - Penalty. No person may knowingly purchase or receive any prescription drug from any source other than a wholesale drug distributor, manufacturer, pharmacy distributor, pharmacy, or other person licensed pursuant to the laws of this state except where otherwise provided. A person violating this section is guilty of a class A misdemeanor. A second violation is a class C felony.

SECTION 3. Wholesale drug distributor advisory committee. The board shall appoint a wholesale drug distributor advisory committee composed of three members. One member must be a representative of a pharmacy and may be a pharmacy distributor, but may not be an employee of the board. One member must be a representative of wholesale drug distributors. One member must be a representative of drug manufacturers. In making appointments, the board shall consider recommendations received from wholesale drug distributors, pharmacy distributors, and drug manufacturers and shall adopt rules that provide for solicitation of such recommendations. The advisory committee shall review and make recommendations to the board on the merit of rules of the board which deal with wholesale drug distributors, pharmacy distributors, and drug manufacturers. The board may not adopt any rule affecting wholesale drug distributors or pharmacy distributors without first submitting the proposed rule to the committee for review and comment.

SECTION 4. Wholesale drug distributor and pharmacy distributor licensing requirements - Penalty.

1. No person may act as a wholesale drug distributor or pharmacy distributor without first obtaining an annual license to do so from the board and paying the annual fee required by the board.
2. The board may grant a temporary license when the wholesale drug distributor or pharmacy distributor first applies for a license to operate within this state. A temporary license is valid until the board finds that the applicant meets the requirements for regular licensure.
3. The licensee shall operate in a manner prescribed by law and according to the rules adopted by the board.
4. The board may require a separate license for each facility directly or indirectly owned or operated by the same business entity within this state, or for a parent entity with divisions, subsidiaries, or affiliate companies within this state if operations are conducted at more than one location and there exists joint ownership and control among all the entities.
5. An applicant for a license and a licensee shall satisfy the board that the applicant or licensee has and will continuously maintain:
 - a. Adequate storage conditions and facilities;
 - b. Minimum liability and other insurance as may be required under any applicable federal or state law;
 - c. A viable security system that includes after hours, central alarm, or comparable entry detection capability; restricted premises access; comprehensive employment applicant screening; and safeguards against all forms of employee theft;
 - d. A system of records that describes all wholesale drug distributor and pharmacy distributor activities for at least the most recent two-year period and which is reasonably accessible in any inspection authorized by the board;
 - e. Principals and persons, including officers, directors, primary shareholders, and key management executives, who must at all times demonstrate and maintain their capability of conducting business in conformity with sound financial practices as well as state and federal law;
 - f. Complete, updated information, to be provided the board as a condition for obtaining and retaining a license, about each wholesale drug distributor to be licensed under this Act, including pertinent licensee corporate, if applicable, or other ownership, principal, key personnel, and facilities information;
 - g. Written policies and procedures that assure reasonable wholesale drug distributor and pharmacy distributor preparation for, protection against, and handling of any facility security

or operation problems, including problems caused by natural disaster or government emergency; inventory inaccuracies or product shipping and receiving; outdated product or other unauthorized product control; appropriate disposition of returned goods; and product recalls;

- h. Sufficient inspection procedures for all incoming and outgoing product shipments; and
- i. Operations in compliance with all federal legal requirements applicable to wholesale drug distribution.

All requirements by the board under this subsection must conform to wholesale drug distributor licensing guidelines formally adopted by the United States food and drug administration. In case of conflict between any wholesale drug distributor licensing requirement imposed by the board under this subsection and any wholesale drug distributor licensing guideline of the food and drug administration, the guideline controls.

- 6. An agent or employee of any licensed wholesale drug distributor or pharmacy distributor need not seek licensure under this section and may lawfully possess pharmaceutical drugs when acting in the usual course of business or employment.
- 7. A person who violates this section is guilty of a class C felony.

SECTION 5. Out-of-state wholesale drug distributor and pharmacy distributor licensing requirements - Penalty.

- 1. An out-of-state wholesale drug distributor or pharmacy distributor or a principal or agent of the distributor may not conduct any business in this state unless the distributor has obtained a license to do so from the board and paid the fee required by the board.
- 2. Application for a license under this section must be made on a form furnished by the board.
- 3. The issuance of a license under this section does not change or affect tax liability imposed by this state on any out-of-state wholesale drug distributor or pharmacy distributor.
- 4. The board, by rule, may license out-of-state wholesale drug distributors or pharmacy distributors on the basis of reciprocity to the extent that an out-of-state wholesale drug distributor or pharmacy distributor:
 - a. Possesses a valid license granted by another state pursuant to legal standards comparable to those of this state which must be met for obtaining a license under the laws of this state; and
 - b. Shows that the other state would extend reciprocal treatment under its own laws to a wholesale drug distributor or pharmacy distributor of this state.
- 5. A person who violates this section is guilty of a class C felony.

SECTION 6. License renewal procedures. The board shall mail an application for license renewal to each licensee before the first day of the month in which the license expires. If application for renewal of the license, along with required fee, is not received by the board before the first day of the following month, the license expires on the last day of that month.

SECTION 7. Adoption of rules. Every rule adopted by the board with respect to implementation of this Act must conform to the wholesale drug distributor licensing guidelines formally adopted by the United States food and drug administration. In case of conflict between a rule adopted by the board and a guideline of the food and drug administration, the guideline controls.

SECTION 8. Violations of Act - Effect on licensure. If the board determines that a wholesale drug distributor or wholesale pharmacy distributor has committed an act or is engaging in a course of conduct which constitutes a clear and present danger to the public health and safety in this state, the board may restrict or suspend the wholesale drug distributor's or pharmacy distributor's license. The board has the burden of proving that a wholesale drug distributor or wholesale pharmacy distributor is a clear and present danger to the public health and safety.

SECTION 9. Inspection powers and access to wholesale drug distributor records - Penalty. The board or a designee of the board may conduct inspections during normal business hours upon all open premises purporting or appearing to be used by a wholesale drug distributor or wholesale pharmacy distributor in this state. A distributor who provides adequate documentation of the most recent satisfactory inspection less than three years old by either the United States food and drug administration or a state agency determined to be comparable by the board is exempt from further inspection for a period of time determined by the board. This exemption does not bar the board from initiating an investigation pursuant to a complaint regarding a wholesale drug distributor or pharmacy distributor. A wholesale drug distributor may keep records at a central location apart from the principal office of the wholesale drug distributor or the location at which the drugs were stored and from which they were shipped; provided, that the records are made available for inspection within three business days of a request by the board. The records may be kept in any form permissible under federal law applicable to prescription drugs recordkeeping. A person who fails to provide a duly authorized person the right of entry as provided in this section is guilty of a class A misdemeanor for the first conviction and a class C felony for each subsequent conviction.

SECTION 10. Judicial enforcement. Upon proper application by the board, a court of competent jurisdiction may grant an injunction, restraining order, or other order as may be appropriate to enjoin a person from offering to engage or engaging in the performance of any acts or practices for which a certificate of registration or authority, permit, or license is required by any applicable state law, including this Act, upon a showing that the acts or practices were or are likely to be performed or offered to be performed without a certificate of registration or authority, permit, or license. An action authorized under this section is in addition to and not in lieu of any other penalty provided by law and may be brought concurrently with other actions to enforce this Act.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 524

SENATE BILL NO. 2191
(Maxson)

FOREIGN-TRAINED PHYSICIAN LICENSING

AN ACT to amend and reenact section 43-17-18 of the North Dakota Century Code, relating to qualifications of a foreign-trained applicant for a license to practice medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17-18 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17-18. Qualifications of applicant for ~~examination~~ license. An applicant for a license to practice medicine shall present evidence satisfactory to the board of the following qualifications:

1. Possession of the degree of doctor of medicine or doctor of osteopathy from a medical school located in the United States, its possessions or territories, or Canada, approved by the board or by an accrediting body approved by the board at the time the degree was conferred;
2. If the applicant is the graduate of a reputable medical or osteopathic college in the United States or Canada, successful completion of one year of postgraduate training approved by the board or by an accrediting body approved by the board;
3. If the applicant is a graduate of a medical or osteopathic college that has not been approved by the board or accredited by an accrediting body approved by the board at the time the degree or its equivalent was conferred, a certificate issued by the educational council for foreign medical graduates, proficiency in writing and speaking English, and the successful completion of three years of postgraduate training in a program approved by the board or by an accrediting body approved by the board. However, the board may license an applicant with one year of residency training in the United States or Canada who has been approved for faculty status in psychiatry by the university of North Dakota and its medical school. The board may also grant a special license to an applicant who is a graduate of a foreign medical school, has successfully completed one year of approved postgraduate training in the United States or Canada, and is enrolled in a residency program in this state for the purpose of practicing medicine only within the scope of the residency training program;
4. Successful completion of a medical licensure examination satisfactory to the board;

5. Physical, mental, and professional capability for the practice of medicine in a manner acceptable by the board; and
6. A history free of any finding by the board, any other state medical licensure board, or any court of competent jurisdiction of the commission of any act which would constitute grounds for disciplinary action under this chapter; the board, in its discretion, may modify this restriction for cause.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 525

SENATE BILL NO. 2189
(Committee on Judiciary)
(At the request of the Attorney General)

MEDICAL COMPETENCY RECORDS

AN ACT to amend and reenact section 43-17.1-08 of the North Dakota Century Code, relating to disclosure of records of the commission on medical competency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-17.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-17.1-08. Communication to commission privileged. Communications to the commission and its agents are privileged, and no member of the commission nor any of its agents shall be compelled to testify with respect thereto in any proceedings except in those proceedings conducted before the board of medical examiners wherein the competency of a physician is at issue. All records of the commission, except its financial records, shall be confidential. Notwithstanding the provisions of this section, if the commission determines that the records of the commission disclose a possible violation of state or federal criminal law, the commission may provide the records to the appropriate law enforcement agency.

Approved April 11, 1989
Filed April 12, 1989

CHAPTER 526

SENATE BILL NO. 2097
(Committee on Industry, Business and Labor)
(At the request of of the State Plumbing Board)

PLUMBING BOARD AND CONTINUING EDUCATION

AN ACT to create and enact a new section to chapter 43-18 and a new subsection to section 43-18-18 of the North Dakota Century Code, relating to continuing education requirements for persons licensed by the state plumbing board; and to amend and reenact subsection 4 of section 43-18-01, section 43-18-12, subsection 3 of section 43-18-21, subsections 2 and 4 of section 43-18.2-01, and sections 43-18.2-03 and 43-18.2-09 of the North Dakota Century Code, relating to plumbing, examination notice, grounds for revocation of license, apprenticeship credits, continuing education, and sewer and water contractor's and installer's licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 43-18-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Plumbing" shall mean the act of installing in buildings the pipes, installation, maintenance, extension, alteration, and removal of all piping, plumbing fixtures, plumbing appliances, and other facilitating apparatus for appurtenances in connection with bringing water into, and using the same in buildings, and for removing liquids and water-carried wastes therefrom.

SECTION 2. AMENDMENT. Section 43-18-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-18-12. Examination - When held - Notice. The board shall hold two public meetings a year at the state capitol for the purpose of examining persons who may desire to take the examination to become registered and licensed plumbers as provided by this chapter. Each examination Examinations shall be held at the time and place prescribed by the board. Notice of such meeting examinations shall be given by mail to all persons who have made application to take the examination and also by publication in such newspaper or newspapers as may be designated by the board. The board may call a special meeting and special examination at any time.

SECTION 3. A new subsection to section 43-18-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Failure to furnish certification of completion of continuing education as required under section 5 of this Act.

SECTION 4. AMENDMENT. Subsection 3 of section 43-18-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. An apprentice shall serve a term of seven thousand six hundred hours. When the applicant furnishes proof of previous practical experience in the trade, or is a graduate of a course in plumbing in an accredited school, the board may grant him hourly credit toward his term of apprenticeship. ~~Graduates of the plumbing course of an accredited school having at least a nine-month (one thousand twenty hours) course in plumbing may receive the following number of hours credit for each hour of the course according to the graduating grade average they received:~~

- ~~a. A average - two hours.~~
- ~~b. B average - one and three-quarters hours.~~
- ~~c. C average - one and one-half hours.~~
- ~~d. D average - one hour.~~

SECTION 5. A new section to chapter 43-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Continuing education. After January 1, 1991, each applicant for renewal of a master or journeyman plumber's license under section 43-18-17 must have successfully completed prior thereto at least two credit hours, and thereafter a minimum of two credit hours and not to exceed four credit hours within a two-year period, of continuing education relating to the plumbing trade.

Credit hours for educational sessions must be determined by the board on a continuing basis to evaluate new sessions as they become available for fulfilling the educational requirements of this section. The board may charge a fee sufficient to offset expenses incurred for any educational sessions for which it is directly responsible.

SECTION 6. AMENDMENT. Subsections 2 and 4 of section 43-18.2-01 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. "Sewer and water contractor" means any person who installs, plans, and manages the installation and repair of building sewer and water service.
4. "Sewer and water installer" means any person, other than a sewer and water contractor, who installs and repairs building sewer and water service.

SECTION 7. AMENDMENT. Section 43-18.2-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-18.2-03. Sewer and water installer licenses: Licenses. The board shall issue a special license to any person before that person installs and repairs any sewer and water plumbing installation. This license allows the licensee to do the plumbing necessary for sewer and water installation. A sewer and water installer license is not required of licensed master plumbers and journeyman plumbers. No person, firm, or corporation, except plumbers holding valid licenses under chapter 43-18, may engage in the business of

sewer and water contractor or sewer and water installer unless registered and licensed by the board to do so. This license allows the licensee to do plumbing necessary for sewer and water installation.

SECTION 8. AMENDMENT. Section 43-18.2-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-18.2-09. License renewal fees. The license renewal fee for a sewer and water ~~installation~~ contractor after the first year of licensure ~~is~~ may not exceed one hundred dollars per year, and the license renewal fee for a sewer and water installer after the first year of licensure ~~is~~ may not exceed twenty-five dollars per year. The license renewal fee for a sewer and water installer apprentice after the first two years of licensure is twenty-five dollars.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 527

HOUSE BILL NO. 1372
(Representatives Frey, Tollefson, Skjerven)
(Senator Lips)

PLUMBERS' ADVERTISING

AN ACT to create and enact a new section to chapter 43-18 of the North Dakota Century Code, relating to advertising by plumbers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-18 of the North Dakota Century Code is hereby created and enacted to read as follows:

Advertising prohibited - Exceptions - Penalty.

1. Except as provided in this section, where a plumbing license is required under section 43-18-11 or by local ordinance, no person offering plumbing contracting services may advertise as a plumbing contractor, master plumber, or journeyman plumber unless the person employs a licensed journeyman plumber, or the person is a licensed master plumber. Any advertisement must contain the appropriate license number. This section does not apply to advertising purchased or contracted for prior to July 1, 1989.
2. a. A person violating this section is guilty of a class B misdemeanor for a first conviction, but no fine in excess of one hundred dollars and no term of imprisonment may be imposed.
b. A person violating this section is guilty of a class A misdemeanor for a second or subsequent conviction, but the penalties are as follows:
 - (1) For a second conviction, no fine in excess of one thousand dollars and no term of imprisonment may be imposed.
 - (2) For a third or subsequent conviction, a fine not to exceed one thousand dollars or imprisonment not to exceed thirty days, or both, may be imposed.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 528

HOUSE BILL NO. 1187
(Committee on Industry, Business and Labor)
(At the request of the Real Estate Commission)

REAL ESTATE COMMISSION AUTHORITY

AN ACT to amend and reenact subsection 3 of section 43-23-11.1 and section 43-23-13 of the North Dakota Century Code, relating to investigations, grounds for refusal, suspension, or revocation of real estate licenses, hearings and appeals, and licensing fees of the real estate commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-23-11.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. No license may be revoked or suspended, no monetary fine imposed, nor any letter or reprimand issued except after hearing before the commission with a copy of the charges having been duly served upon the licensee and upon sustaining of the charges for suspension, revocation, fine, or reprimand. The provisions of chapter 28-32, including but not limited to procedures for service of process, hearing, rules, evidence, findings, and appeals, shall apply to and govern all proceedings for suspension, revocation, fine, or reprimand of licenses or licensees, except where inconsistent with this chapter or rules of the commission.

SECTION 2. AMENDMENT. Section 43-23-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23-13. Fees. Fees for real estate brokers, mortgage brokers, and real estate salesmen are as follows:

1. A fee of ~~forty~~ fifty dollars shall accompany an application for an individual's real estate broker's or mortgage broker's license and for each annual renewal of the license.
2. For each license issued to a partnership, association, corporation, trust, cooperative, or other firm or entity, foreign or domestic, and for each annual renewal of the license, a fee of ~~forty~~ fifty dollars.
3. For an individual's real estate salesman's license and for each annual renewal of the license, a fee of ~~thirty~~ forty dollars.
4. For each additional office or place of business, an annual fee of ten dollars.

5. For each change of office or place of business, a fee of ten dollars.
6. For each transfer of a real estate salesman's license, a fee of ten dollars.
7. For each duplicate license, where the original license is lost or destroyed and affidavit made thereof, a fee of ten dollars.
8. For each examination given to an applicant, before a license is issued, a fee of twenty dollars.
9. For each change of name, a fee of ten dollars.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 529

HOUSE BILL NO. 1411
(Soukup, Halmrast)

MASSAGE THERAPY REGULATION

AN ACT to amend and reenact sections 43-25-02, 43-25-05, 43-25-07, 43-25-08, 43-25-09, 43-25-13, and 43-25-14 of the North Dakota Century Code, relating to regulation of the practice of massage therapy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-25-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-02. Definitions.

1. "Board" means the North Dakota board of massage.
2. "Massage establishment" means any place of business ~~wherein all or any~~ where one or more of the ~~named~~ subjects and methods of treatments, ~~as~~ defined in this section, are administered or used.
3. "Massage therapist" means a person who practices or administers ~~all or any~~ of the following ~~named~~ subjects, and who has ~~made a study of~~ studied the underlying principles of anatomy and physiology ~~as are~~ generally included in a regular course of study by a recognized and approved school of massage: the art of body massage either by hands or with a mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, heat lamps, salt glows, hot and cold packs, tub, shower, or cabinet baths. Massage is the practice of a profession scientifically applied to the patient by the operator's hands and includes such modalities as acupressure, reflexology, and polarity. Variations of the following procedures are used: touch, stroking, friction, kneading, vibration, percussion, and medical gymnastics. Massage therapists ~~shall~~ may not diagnose or treat classified diseases, ~~nor~~ or prescribe or administer vitamins.

SECTION 2. AMENDMENT. Section 43-25-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-05. Board of massage - Terms. ~~For the purpose of carrying out the provisions of this chapter, the~~ The governor shall appoint a board to be ~~known as~~ the North Dakota board of massage, to consist of three massage therapists who are members of the North Dakota massage therapy association. The members ~~shall~~ must be appointed for three years, staggered so that the term of one member expires each year, and ~~they~~ each member shall hold office until ~~their successors are~~ that member's successor is appointed and qualified.

SECTION 3. AMENDMENT. Section 43-25-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-07. Requisites for application and examination - Subjects - Minimum passing grade - Fees Fee for reexamination. Any person who ~~shall furnish to the board satisfactory proof that he or she~~ is eighteen years of age or more, a high school graduate ~~and, a bona fide resident of the state of North Dakota for at least one month immediately preceding his or her~~ the application to take the examination, and of good moral character and temperate habits, ~~and shall present~~ is entitled to apply to the secretary-treasurer of the board. The person is entitled to be issued a certificate of registration as a massage therapist if the person:

1. Presents a diploma or credentials issued by a recognized, approved school of massage or like institution of not less than one thousand hours of study and who passes approved by the American massage therapy association or shows that the applicant is an active member of the American massage therapy association.
2. Passes a reasonable demonstrative, oral, and written examination, conducted by and under the supervision and direction of the board in the art of body massage by hand, or with any mechanical or vibratory apparatus for the purpose of body massaging, reducing or contouring, the use of oil rubs, salt glow, hot and cold packs, tub, shower, heat lamps, and similar baths, and shall pay.
3. Pays the fees hereinafter specified required, which fees shall must accompany the application to the secretary-treasurer of the board, shall be entitled to be registered and to be issued a certificate of registration as a massage therapist.

Minimum requirements for certificate of registration shall be An applicant must achieve a general average score in the examination of seventy-five percent in all subjects involved and ~~not no score of~~ less than fifty percent in any one subject.

Any applicant failing to pass the requirements ~~shall be~~ is entitled ~~within six months~~ to a reexamination within six months upon payment of an additional fee of ten fifty dollars or a lesser amount established by the board, but two ~~such~~ reexaminations ~~shall~~ exhaust the privilege under the original application.

Conviction of an offense ~~shall~~ does not disqualify a person from registration under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a massage therapist, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 4. AMENDMENT. Section 43-25-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-08. Fees Fee for certificate of registration. The fee to be paid by an applicant to determine ~~his or her~~ fitness to receive a certificate of registration to practice as a registered massage therapist shall be thirty five is one hundred fifty dollars or a lesser amount established by the board.

The fee to be paid by a massage therapist for the renewal of a certificate shall be ten dollars for each renewal and a certificate shall be renewed annually. Attendance at postgraduate work at least three days a year, as prescribed by the board, is a further requirement for renewal of a certificate.

SECTION 5. AMENDMENT. Section 43-25-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-09. Certificate of registration - Recording - Displaying conspicuously - Renewal - Renewal fee. Each certificate of registration ~~shall~~ must be conspicuously displayed at the place of practice and must be recorded in the office of the clerk of the district court of each in any county wherein where the registered massage therapist practices, and within thirty days after issuance of such certificates. Annually, on. On or before the first day of January first of each year, each and every registered massage therapist shall pay to the secretary-treasurer of the board the a renewal fee as herein provided of one hundred dollars or a lesser amount established by the board. Attendance at postgraduate work of at least three days eighteen continuing education units a year, as prescribed by the board, is a further requirement for renewal of the certificate. In the estimation of If the board, if they should so decide, and upon due proof, after a physical examination of any operator whom they suspect or know to be reasonably believes a massage therapist is in such physical well-being condition as to jeopardize the health of those who seek relief from him or her the massage therapist, the board shall then may require the applicant to have a physical examination by a competent medical examiner, and if found to have. If the applicant has had or has any communicable disease sufficient to disqualify said the applicant of a state certificate to practice massage in the state, the granting of the certificate board shall be denied deny a certificate until the applicant furnishes due proof of being physically and mentally competent and sound. The A holder of an expired certificate of registration may, within one year from the date of its expiration thereof, have the certificate renewed upon payment of the required renewal fee, and production of a new certificate of physical examination. All certificate holders shall be designated as certified massage therapists and shall may not use any title or abbreviation thereof without the designation "massage therapist".

SECTION 6. AMENDMENT. Section 43-25-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-13. Records to be kept by the secretary-treasurer of the board. The secretary-treasurer of the board shall keep a record book in which shall be entered of the names of all persons to whom certificates have been granted under this chapter, the certificate number of each, and the date of granting such each certificate and renewal thereof, and other matters of record, and the book so provided and kept shall be deemed and considered a book of records, and a transcript of any record therein or a certificate that there is not entered therein, the name and certificate number of or date of granting such certificate to a person charged with a violation of any of the provisions of this chapter. Any official entry or a certificate of the absence of information, certified under the hand of the secretary-treasurer, and the seal of the board, shall be admitted as evidence in any of the courts of the state of North Dakota. The original books, records, and papers of the board shall must be kept at the office of the secretary-treasurer of said board. The secretary-treasurer shall furnish to any persons making

application therefor person a copy of any such record, certified by him as the secretary-treasurer, upon payment of a fee of ten dollars plus twenty-five cents per one hundred words so page copied, the fee to belong to the secretary-treasurer. The secretary-treasurer shall prepare and submit to the governor and to the North Dakota massage therapy association a biennial report detailing income and expenses and a list of massage therapists certified.

SECTION 7. AMENDMENT. Section 43-25-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-14. Compensation of board members - Clerks. The board members shall receive ~~ten~~ fifty dollars per day and traveling expenses while actually engaged in their official duties. The secretary-treasurer shall be paid three dollars per member per year. The board ~~shall have authority to~~ may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid said employees.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 530

SENATE BILL NO. 2099
(Committee on Industry, Business and Labor)
(At the request of the Attorney General)

MASSAGE THERAPIST DISCIPLINARY ACTIONS

AN ACT to amend and reenact section 43-25-12 of the North Dakota Century Code, relating to powers of the board of massage therapists to revoke, suspend, or annul certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-25-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-25-12. Power of board to revoke, suspend, or annul certificates. The board may, upon satisfactory proof made that any certificate holder has been guilty of any of the charges preferred against him or her, revoke, suspend, or annul any certificate to do business issued hereunder, upon a two-thirds majority vote of the board, ~~provided however that such accused person may have the proceedings of said board reviewed by certiorari to the district court of the district in which the certificate is recorded. Said writ shall be issued upon the petition of the person whose certificate has been revoked, suspended, or annulled at any time within ninety days after such revocation, suspension, or annulment. An appeal from the final decision of the board may be taken under chapter 28-32.~~

The accused shall have the right to demand a trial de novo before the district court and thereafter the court shall hear and determine the guilt or innocence of the accused according to the evidence and law applicable to the facts in evidence. Unless the court shall render a decision in favor of the accused, and restore him or her to all rights to practice under this chapter, the action of the board shall stand. Appeals from any decisions of the district court may be taken to the supreme court of North Dakota in the same manner and subject to like conditions as appeals in other cases are taken. In the event that any such certificate shall be revoked, suspended, or annulled under the provisions of this chapter, the board shall forthwith transmit to the clerk of the district court in which the accused is registered as a massage therapist, a certificate under its seal certifying that the registration has been revoked, suspended, or annulled, as the case may be, and the clerk shall, upon receipt of the certificate, file it and forthwith mark the registration revoked, suspended, or annulled, as the case may be, and in the event of suspension, shall indicate thereon the period for which it is suspended.

Any person who shall practice massage after his or her certificate has been revoked, suspended, or annulled shall be deemed to have practiced massage without a certificate. However, at any time after six months from the date of conviction, the board may in the exercise of its reasonable discretion by a majority vote, issue a new certificate to the person affected, restoring or conferring all rights and privileges of and pertaining to the practice of massage, but the fee shall be the same as upon issuance of the original certificate.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 531

HOUSE BILL NO. 1622
(Stenehjem, V. Thompson, R. Hausauer)

PHYSICAL THERAPIST LICENSE FEES

AN ACT to amend and reenact sections 43-26-06 and 43-26-09 of the North Dakota Century Code, relating to payment of application and renewal fees by physical therapists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-26-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-26-06. Applicants - Qualifications - Examinations. It shall be the duty of the committee to pass upon the qualifications of all applicants for physical therapy and physical therapist assistant examination and registration, provide for and conduct all examinations, determine the applicants who successfully pass the examination, and duly register such persons. To be registered as a physical therapist or a physical therapist assistant, a person must:

1. Be at least eighteen years of age.
2. Be of good moral character.
3. Have been graduated by a school of physical therapy or a program of physical therapist assistant training approved by the committee.

Examinations shall embrace subjects to test an applicant's knowledge of the basic and clinical sciences as they relate to physical therapy, and physical therapy theory and procedures, and such other subjects as the committee may determine to be necessary. When applying to take the registration examination, the applicant shall pay the committee a fee fixed by committee regulation and not exceeding ~~seventy-five~~ two hundred dollars which shall not be returned if the application is denied.

SECTION 2. AMENDMENT. Section 43-26-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-26-09. Renewals - Continued currency - Fees. In January of each year every physical therapist or physical therapist assistant shall apply to the committee for an extension of his or her registration and pay a fee determined by committee regulation and not exceeding ~~twenty-five~~ one hundred dollars. Registration that is not annually renewed on or before January thirty-first shall lapse on that date. The committee, in its discretion, may reinstate a lapsed registration upon payment of the full renewal fee as provided in this section and may, in its discretion, require a late renewal fee of ~~twenty-five~~ fifty dollars.

The committee may establish rules and regulations to require some evidence of continued currency for registration or reregistration as a physical therapist or a physical therapist assistant.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 532

HOUSE BILL NO. 1362
(Representatives Scherber, A. Olson, Myrdal)
(Senators Kinnoin, Tallackson, Mathern)

PHYSICAL THERAPIST DISCIPLINARY PROCEEDINGS

AN ACT to amend and reenact section 43-26-11 of the North Dakota Century Code, relating to grounds for refusal, suspension, or revocation of certification as a physical therapist.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-26-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-26-11. Refusal, suspension, or revocation of certificate. The committee may refuse to register any physical therapist or physical therapist assistant, or may suspend or revoke the registration of any physical therapist or physical therapist assistant, for any of the following grounds:

1. Use of controlled substances, drugs, or liquor to an extent that affects professional competency.
2. ~~Conviction~~ A determination by the committee that a conviction of the holder of an offense ~~determined by the committee to have~~ has a direct bearing ~~upon a~~ on the holder's ability to serve the public as a physical therapist or physical therapist assistant; or ~~if the committee determines that~~, following conviction of any offense, ~~that a~~ the holder is not sufficiently rehabilitated under section 12.1-33-02.1.
3. Procuring, aiding, or abetting an illegal abortion.
4. Obtaining or attempting to obtain registration by fraud or deception.
5. A finding by a court of competent jurisdiction that the registrant is a mentally ill person and has not thereafter been restored to legal capacity.
6. Conduct unbecoming a person registered as a physical therapist or physical therapist assistant, or detrimental to the best interests of the public.
7. ~~For treating~~ Treating or attempting to treat or diagnose ailments or other health conditions of human beings other than by physical therapy and as authorized by this chapter.
8. ~~For applying or offering to apply physical therapy exclusive of initial evaluation or screening other than upon the referral of a~~

licensed physician, or a licensed dentist, or in Failing to refer to a licensed health care professional any patient whose medical condition at the time of evaluation is determined by the physical therapist to be beyond the scope of practice of physical therapy as defined in section 43-26-01.

9. Failure of a licensed physical therapist to report to the committee any licensed physical therapist the holder knows to be in violation of section 43-26-11.
10. In the case of a physical therapist assistant, practicing or offering to practice other than under the onsite direction of a licensed physical therapist.

Approved March 29, 1989

Filed March 30, 1989

CHAPTER 533

HOUSE BILL NO. 1335
(Representative Rydell)
(Senator Mathern)

PRIVATE INVESTIGATIVE AND SECURITY BOARD

AN ACT to amend and reenact sections 43-30-01, 43-30-03, 43-30-04, 43-30-05, 43-30-06, 43-30-08, 43-30-09, 43-30-12, 43-30-13, 43-30-14, and 43-30-15 of the North Dakota Century Code, relating to the functions, powers, and duties of the state private investigative and security board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-30-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the private investigative and security board.
2. "Private investigative service" means obtaining or furnishing information with reference to any act or individual.
- 2- 3. "Private security service" means furnishing for hire security officers or other persons to protect persons or property, or to prevent the theft or the unlawful taking of goods, wares, and merchandise, or to prevent the misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, choses in action, notes, or other valuable documents or papers, or the business of performing the service of such security officer or other person for any of these purposes.

SECTION 2. AMENDMENT. Section 43-30-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-03. Private investigative and security board. The governor shall appoint a private investigative and security board. The board ~~shall~~ must consist of not less than five nor more than eleven members appointed for staggered four-year terms. Appointees to the board must be knowledgeable in private investigative or private security matters. A majority of the members of the board must be actively engaged in the private investigative or security profession. ~~The board shall make recommendations to the attorney general with respect to the exercise of the powers provided in section 43-30-04.~~ Members of the board may not receive any compensation for their service on the board, but they are entitled to be reimbursed for their expenses incurred in performing their duties in the amounts provided by law for state employees.

SECTION 3. AMENDMENT. Section 43-30-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-04. Powers of ~~attorney general~~ the board. The ~~attorney general~~ board shall establish by rule the procedures for classifying, qualifying, licensing, bonding, and regulating persons providing private investigative and security services. The ~~attorney general~~ board shall establish the qualifications required for licensing armed security personnel. All rules adopted by the ~~attorney general~~ board and appeals therefrom, ~~shall must~~ be in accordance with chapter 28-32.

SECTION 4. AMENDMENT. Section 43-30-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-05. License required to provide private investigative or security services - Exclusivity. A person may not provide private investigative or security services without a license issued by the ~~attorney general~~ board. Notwithstanding any other law or ordinance, a person may not be required to obtain a license to provide private investigative or security services in this state other than the license required by this chapter.

SECTION 5. AMENDMENT. Section 43-30-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-06. License applications. Every person who desires to obtain a license shall apply to the ~~attorney general~~ board on applications prepared and furnished by the ~~attorney general~~ board. Each application ~~shall must~~ include the information required by the ~~attorney general~~ board and ~~shall must~~ be accompanied by the required fee.

SECTION 6. AMENDMENT. Section 43-30-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-08. Duplicate licenses. If a loss of a license is shown to the satisfaction of the ~~attorney general~~ board, a duplicate thereof ~~shall must~~ be issued by the ~~attorney general~~ board upon payment of the required fee.

SECTION 7. AMENDMENT. Section 43-30-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-09. Detective agency license. The ~~attorney general~~ board may establish by rule the procedures to be followed by a private investigator to operate a detective agency.

SECTION 8. AMENDMENT. Section 43-30-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-12. Revocation or refusal to renew. The ~~attorney general~~ board may either refuse to renew or may suspend or may revoke a license for any one or any combination of the following causes:

1. Fraud in obtaining a license.
2. Violation of ~~any of the terms and provisions of~~ this chapter or rules adopted which implement section 43-30-04.

3. If the holder of any license or a member of any copartnership or an officer of any corporation has been adjudged guilty of the commission of an offense determined by the attorney general board to have a direct bearing upon a holder's ability to serve the public as a private investigative or security agency, or if the attorney general board determines that, following conviction of any offense, the holder is not sufficiently rehabilitated under section 12.1-33-02.1.
4. Upon the disqualification or insolvency of the surety of the licenseholder's bond unless the licenseholder files a new bond with sufficient surety within thirty days after notice from the attorney general licenseholder.

SECTION 9. AMENDMENT. Section 43-30-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-13. Notice and hearing on license revocation. The attorney general board may, upon ~~his~~ its own motion, and shall, upon the verified complaint in writing of any person setting forth facts which, if proven, would constitute grounds for refusal, suspension or revocation, as herein set forth, investigate the actions of any person holding or claiming to hold a license. The attorney general board shall, before refusing to issue, suspending, or revoking any license, at least ten days prior to before the date set for the hearing notify in writing the applicant or holder of such license of any charges made and shall afford such the accused person an opportunity to be heard in person or by counsel in reference thereto. Such The written notice may be served by personal delivery of the same personally to the accused person, or by mailing the same by registered mail to the place of business last theretofore specified by the accused person in his the person's last notification to the attorney general board. At the time and place fixed in the notice, the attorney general board shall proceed to hearing of the charges and both the accused person and the complainant shall must be accorded ample opportunity to present in person or by counsel, such statements, testimony, evidence, and argument as may be pertinent to the charges or to any defense thereto. The attorney general board may continue such hearing from time to time.

SECTION 10. AMENDMENT. Section 43-30-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-14. Hearing powers. The attorney general shall have power to board may subpoena and bring before it any person in this state and to take testimony either orally or by deposition, or both, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure in civil cases in courts of this state.

SECTION 11. AMENDMENT. Section 43-30-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-30-15. Application of chapter 28-32. Chapter 28-32 governs the procedures under this chapter. Any decision made by the attorney general board under section 43-30-12 is governed by chapter 28-32.

Approved March 16, 1989
Filed March 16, 1989

CHAPTER 534

SENATE BILL NO. 2219

(Committee on Human Services and Veterans Affairs)
(At the request of the Board of Social Work Examiners)

SOCIAL WORKER LICENSING

AN ACT to create and enact a new section to chapter 43-41 of the North Dakota Century Code, relating to the inactive status of nonresident social workers; and to amend and reenact section 43-41-05, subsection 6 of section 43-41-09, sections 43-41-10, and 43-41-11 of the North Dakota Century Code, relating to registration with the board of social work examiners, licensure fees for social workers, authority of the board of social work examiners to issue probationary licenses, and disciplinary hearings by the board of social work examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-41 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Inactive license - Surrender. Licensees no longer residing in the state whose practices do not involve residents of the state will be placed on inactive status. Licensees who wish to maintain a license under inactive status shall continue to meet all requirements for renewal as may be established by rule. A licensee under inactive status will be returned to active status upon proof that the licensee is once again a resident of the state or is providing services to residents of this state.

SECTION 2. AMENDMENT. Section 43-41-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-41-05. Private practice of social work. No person may engage in the private practice of social work unless that person:

1. Is licensed under this chapter as a licensed certified social worker.
2. Has had three years of post master's experience under the supervision of a licensed certified social worker or a social worker who is eligible for licensure as a licensed certified social worker.
3. Is registered with the board as eligible for private practice under criteria as may be established by board rule.

SECTION 3. AMENDMENT. Subsection 6 of section 43-41-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Collect a fee not to exceed one hundred dollars on the filing of each application for a license as a licensed social worker or a licensed certified social worker, and a fee not to exceed twenty dollars for the renewal of a license. Establish fees and receive all moneys collected under this chapter.

SECTION 4. AMENDMENT. Section 43-41-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-41-10. Grounds for disciplinary proceedings. The board may deny, refuse to renew, suspend, ~~or~~ revoke or place on probationary status any license issued under this chapter on proof at a hearing that the applicant or licensed person:

1. Has been convicted of an offense determined by the board to have a direct bearing upon that individual's ability to practice social work and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1.
2. Is addicted to the habitual use of alcoholic beverages, narcotics, or stimulants to such an extent as to incapacitate that individual from the practice of social work.
3. Has been grossly negligent in the practice of social work.
4. Has violated one or more of the rules and regulations of the board.
5. Has violated the code of social work ethics adopted by the board.

SECTION 5. AMENDMENT. Section 43-41-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-41-11. Hearings and disciplinary proceedings - Appeals.

1. Hearings and disciplinary proceedings are to be conducted by a three member panel appointed and empowered by the board, with a majority vote to determine the recommended decision. Upon the filing of a written and signed complaint that alleges that a licensee practicing in this state has engaged in conduct identified as grounds for disciplinary action under section 43-41-10, and which sets forth information upon which a reasonable and prudent person might believe that further inquiry should be made, the board shall cause the matter to be investigated.
2. The board may investigate a complaint on its own motion, without requiring the identity of the complainant to be made a matter of public record, if the board concludes that good cause exists for preserving the anonymity of the complainant.
3. If the investigation reveals grounds to support the complaint, the board shall initiate a disciplinary action by serving upon the licensee, by certified mail, a notice of disciplinary action setting forth the allegations upon which the action is based, as well as a specification of the issues to be considered and determined.

4. If a written response contesting the allegations is not received by the board within twenty days of the date that the notice of disciplinary action was received or refused, the allegations must be deemed admitted and disciplinary sanctions deemed appropriate by the board must be imposed.
5. Following the initiation of a disciplinary action, as provided in subsection 3, the board may direct the chairman to select a panel of three board members and offer the licensee the opportunity to meet informally with that panel for the purpose of determining whether the disciplinary action, including appropriate sanctions, can be resolved by mutual agreement. Any agreement reached between the panel and the licensee must be ratified by a majority of the board.
6. If an informal agreement cannot be reached, or is not ratified, or the board elects not to offer the licensee the opportunity for informal resolution, the licensee is entitled to a hearing under chapter 28-32. For purposes of the hearing, the licensee is deemed to be the sole party in interest under section 28-32-08 and the provisions of section 28-32-05 apply only to the licensee.
- 2- 7. The aggrieved party may receive a hearing before the full board if the decision of the panel is not acceptable. An appeal from the board's final decision may be taken in accordance with the provisions of section 28-32-15.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 535

HOUSE BILL NO. 1266
(Representatives J. DeMers, Schneider, Wentz)
(Senators Todd, J. Meyer)

DIETETICS PRACTICE

AN ACT to amend and reenact section 43-44-01, subsection 1 of section 43-44-02, section 43-44-06, and subsection 10 of section 43-44-10 of the North Dakota Century Code, relating to definitions, membership of the board of dietetic practice, licensure, titles, and abbreviations for dietitians and nutritionists, and persons exempt from licensure as dietitians and nutritionists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-44-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-44-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Association" means the North Dakota dietetic association.
2. "Board" means the board of dietetic practice.
- ~~3.~~ 2. "Dietetics" means the application of principles derived from integrating knowledge of food, nutrition, biochemistry, physiology, management, and behavioral and social science to achieve and maintain the health of people by providing nutrition assessment and nutrition care services.
- ~~4.~~ 3. "Dietitian" includes dietician.
- ~~5.~~ 4. "General nutrition services" means the counseling of individuals or groups in the selection of food to meet normal nutritional needs, and the assessment of nutritional needs of individuals or groups by planning, organizing, coordinating, and evaluating the nutritional components of community health services.
- ~~6.~~ 5. "Licensed registered dietitian" means a person licensed to practice dietetics as provided in this chapter.
- ~~7.~~ 6. "Licensed nutritionist" means a person licensed to provide general nutrition services as provided in this chapter.
- ~~8.~~ 7. "Nutrition assessment" means the screening and evaluation of the nutrition of individuals and groups based upon appropriate biochemical, anthropometric, physical, and dietary data to determine their nutritional needs and recommend appropriate nutritional intake including enteral and parenteral nutrition.

9- 8. "Nutrition care services" includes:

- a. Providing nutrition assessment.
- b. Planning or providing of food appropriate for physical and medical needs.
- c. Providing nutrition counseling to meet both normal and therapeutic needs.
- d. Providing general nutrition services and related nutrition activities.

SECTION 2. AMENDMENT. Subsection 1 of section 43-44-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A The governor shall appoint a board of dietetic practice is established. The board consists, consisting of five members appointed by the governor, all of whom must be residents of the state at the time of their appointment, and four of whom must be appointed from a list of names submitted by the association. The persons appointed from the list submitted by the association must have been engaged in the teaching or rendering of dietetics or general nutrition services to the public, or in research in dietetics or general nutrition services for three years immediately preceding their appointment. Four Three board members must be licensed registered dietitians or licensed nutritionists, and at least three members one member must be a licensed registered dietitians nutritionist. The members first appointed to the board need not be licensed under this chapter for appointment to their first term on the board, but must possess the qualifications necessary for licensure under this chapter. One member must be appointed to represent consumers of health services.

SECTION 3. AMENDMENT. Section 43-44-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-44-06. License required - Title - Abbreviation ~~Abbreviations. No A~~ person may ~~not practice, nor or~~ represent oneself as able to practice, as a ~~licensed registered dietitian, or a licensed nutritionist, using use~~ the title ~~"licensed nutritionist", "dietitian", "registered dietitian", "licensed dietitian", or "licensed registered dietitian", nor use~~ or the abbreviations ~~"LN", "RD", "LD", or "LRD" unless so licensed under this chapter. A licensed nutritionist may use the title "licensed nutritionist" and the abbreviation "LN".~~ A licensed registered dietitian may use the title "licensed registered dietitian" and the abbreviation "LRD". A person may not practice, or represent oneself as able to practice, as a licensed nutritionist using the title "licensed nutritionist" or the abbreviation "LN" unless so licensed under this chapter. A licensed nutritionist may use the title "licensed nutritionist" and the abbreviation "LN".

SECTION 4. AMENDMENT. Subsection 10 of section 43-44-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. A person who markets or distributes food, food materials, or dietary supplements, or any person who engages in the ~~explanation~~ advising of the use of those products, or the preparation of those products, or the counseling of individuals or groups in the selection of products to meet normal nutritional needs, if that person does not represent that that person is a licensed registered dietitian or licensed nutritionist.

Approved April 7, 1989

Filed April 7, 1989

CHAPTER 536

SENATE BILL NO. 2284
(Senator D. Meyer)
(Representative J. DeMers)

HEALTH PROFESSIONAL PEER ASSISTANCE

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to the authority of health professional licensing boards to establish agreements with peer assistance entities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 43 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions.

1. "Board" means:

- a. The board of registry in podiatry;
- b. The state board of chiropractic examiners;
- c. The state board of embalmers;
- d. The North Dakota board of nursing;
- e. The North Dakota state board of optometry;
- f. The state board of pharmacy;
- g. The state board of medical examiners;
- h. The North Dakota board of massage;
- i. The state examining committee for physical therapists;
- j. The state board of dental examiners;
- k. The state board of veterinary medical examiners;
- l. The North Dakota state board of psychologist examiners;
- m. The board for licensing hearing aid dealers and fitters;
- n. The North Dakota state board of examiners for nursing home administrators;
- o. The state board of examiners of audiology and speech pathology;

- p. The North Dakota board of athletic trainers;
 - q. The board of occupational therapy practice;
 - r. The North Dakota board of social work examiners;
 - s. The North Dakota respiratory care examining board;
 - t. The board of dietetic practice;
 - u. The board of addiction counseling examiners; and
 - v. Any health care related board granted licensing authority by the legislative assembly after the effective date of this Act.
2. "Peer assistance entity" means an organization, a program, or a committee or a professional association which is designed to address the issues of alcoholism and other drug dependency and impairment affecting practitioners of the health care professions.

Agreements with peer assistance entities.

1. The board may enter into agreements with peer assistance entities to undertake those functions and responsibilities specified in the agreements which assist the board in performing its duties, implementing disciplinary actions or sanctions, and in otherwise addressing potential or confirmed problems of alcohol or drug abuse and impairment regarding board licentiates.
2. To fund the activities of a peer assistance entity as specified and undertaken under an agreement, the board may annually allocate to the entity a fixed portion of each licentiate registration or licensure fee, or any portion of additional funds available to the board from other sources.

Approved March 22, 1989

Filed March 23, 1989

CHAPTER 537

SENATE BILL NO. 2449
(Senators Thane, Holmberg, J. Meyer)
(Representatives Solberg, R. Larson)

COUNSELOR LICENSING AND REGULATION

AN ACT to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to creation of a board of counselor examiners and regulation of the practice of counselors; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 43 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Board" means the board of counselor examiners.
2. "Counseling" means assisting an individual, group, or family to develop understanding of intrapersonal and interpersonal problems; to define and set goals, make decisions, and plan a course of action reflecting the needs, interests, and abilities of the person or persons; and to use informational and community resources as needed for personal, social, educational, and vocational development and adjustment.
3. "Counselor" means a person who has been granted either a professional counselor or associate counselor license by the board.
4. "Licensed associate counselor" means a person who has been granted an associate license by the board to offer and conduct counseling under the supervision of a licensed professional counselor or such other person meeting the requirements of supervising professional set by the board.
5. "Licensed professional counselor" means a person who is trained in counseling, guidance, or human services and has been granted a professional counselor license by the board.

Board of counselor examiners - Qualifications - Appointment - Term of office - Compensation.

1. The governor shall appoint the board of counselor examiners which consists of five members, including two practicing counselors, one counselor educator, and two members of the public.
2. Members of the board are appointed for terms of three years, except of those first appointed, one must be appointed for terms of one

year, two must be appointed for terms of two years, and two must be appointed for terms of three years. Each member holds office until the member's successor is duly appointed. The governor may remove any member for misconduct, incompetency, or neglect of duty after providing the member with a written statement of the charges and an opportunity for a hearing.

3. The board shall annually select a chairman from among its members. The board shall meet at least twice a year. Additional meetings may be held at the discretion of the chairman or upon written request of any three members of the board.
4. Each member shall serve without compensation but is entitled to receive expenses as provided in section 54-06-09 and per diem as must be fixed by the board.

Duties and responsibilities of board. In addition to the duties set forth elsewhere in this chapter, the board shall:

1. Publish an annual list of the names and addresses of all persons licensed under this chapter.
2. Approve and administer an examination for counselors.
3. Set and collect a fee, not to exceed one hundred dollars, for the filing of each application for a license under this chapter and set and collect a fee, not to exceed twenty dollars, for the renewal of a license under this chapter.
4. Deposit and disburse all fees and moneys collected by the board in accordance with section 54-44-12.
5. Establish continuing education requirements for license renewal.
6. Issue provisional or probationary licenses.
7. Establish a code of ethics for the practice of counseling.

Representation to the public. Only persons licensed under this chapter may use the title "professional counselor" or "associate counselor". The license issued by the board must be prominently displayed at the principal place of business of the counselor.

Counseling practice - Exceptions.

1. This chapter does not prevent any person licensed by the state from doing work within the standards and ethics of that person's profession, if that person does not represent to the public that the person is a professional counselor or associate counselor.
2. This chapter does not apply to the activities, services, or use of an official title on the part of a person employed as a counselor by any federal, state, or local political subdivision or by a private or public educational institution, if the person is performing counseling within the scope of employment.

3. This chapter does not prevent students or trainees who are enrolled in programs leading to counseling degrees from interning within the limitations set by the rules adopted by the board under chapter 28-32.
4. This chapter does not prevent a licensed attorney from providing services within the scope of the practice of law.
5. This chapter does not prevent a member of the clergy of any religious denomination from providing services within the scope of ministerial duties.
6. This chapter does not prevent the employment of, or volunteering by, individuals in nonprofit agencies or community organizations if these persons do not hold themselves out to the public as professional counselors or associate counselors.

Licenses - Qualifications - Reciprocity.

1. Except as otherwise provided in this chapter, no person may engage in counseling in this state unless that person is a licensed professional counselor or licensed associate counselor.
2. The board shall issue a license as a licensed professional counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes evidence to the board that the applicant:
 - a. Has received a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
 - b. Has provided personal and professional recommendations that meet the requirements adopted by the board and has satisfied the board that the applicant will adhere to the highest standards of the profession of counseling;
 - c. Has two years of supervised experience under a licensed professional counselor, or its equivalent as determined by the board;
 - d. Has provided a statement of professional intent to practice in this state describing the applicant's proposed use of the license, the intended client population, and the counseling procedures, as defined by the board, the applicant intends to use in serving the client population; and
 - e. Has demonstrated knowledge in the field of counseling by successful completion of an examination prescribed by the board.
3. The board shall issue a license as a licensed associate counselor to each applicant who files an application upon a form and in a manner the board prescribes, accompanied by the required fee, and who furnishes sufficient evidence to the board that the applicant:

- a. Has received a master's degree from an accredited school or college in counseling or other program that meets the academic and training standards adopted by the board;
 - b. Has provided personal and professional recommendations that meet the requirements adopted by the board and has satisfied the board that the applicant will adhere to the standards of the profession of counseling; and
 - c. Has provided a written plan for supervised experience which meets the requirements adopted by the board.
4. The board may waive the formal examination requirements for a professional counselor license when the applicant has been licensed or certified to practice counseling in another state under standards and qualifications similar or greater to those set by the board.
 5. A professional counselor shall renew the license every two years. The board shall renew a license upon payment of a fee set by the board and upon demonstration by the licenseholder of completion of continuing education requirements set by the board.
 6. An associate counselor initially licensed under this chapter may be licensed for no more than two years. The associate counselor's license may be extended beyond two years only upon recommendation of the associate counselor's supervisor and three other counselors, at least one of whom must be a professor from the associate counselor's training program.
 7. For a period of two years beginning on the effective date of this Act, the board shall issue upon the application of any person a license as a licensed professional counselor if the applicant:
 - a. Has received a master's degree that is primarily counseling in content from a regionally accredited institution of higher education;
 - b. Has worked for pay in the counseling field, including counselor education during two of the previous five years;
 - c. Shows evidence of supervision or continued professional growth; and
 - d. Successfully completes an examination approved by the board.

Disciplinary proceedings. The board may deny, refuse to renew, suspend, or revoke any license issued under this chapter upon finding by a preponderance of the evidence that the applicant or licenseholder:

1. Has been convicted of an offense determined by the board to have a direct bearing upon the individual's ability to practice counseling and is not sufficiently rehabilitated as determined by the board in accordance with section 12.1-33-02.1;

2. Has been grossly negligent in the practice of counseling and has injured a client or other person to whom the individual owed a duty; or
3. Has violated any rule of the board.

Complaints - Investigations. A person aggrieved by the actions of a counselor licensed under this chapter may file a written complaint with the board citing the specific allegations of misconduct by the counselor. The board shall notify the counselor of the complaint and require a written response from the counselor. Neither the initial complaint nor the counselor's response is public record. The counselor's response must be made available to the complainant. After review of the complaint and the counselor's response, the board shall determine if there is a reasonable basis to believe that the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board. If the board determines that there is a reasonable basis to believe that the allegations are true and that the allegations constitute a violation of this chapter or the rules of the board, the board shall take appropriate action. If a reasonable basis is not found by the board, the board shall so notify the complaining party and the counselor in writing.

Confidentiality. Except as provided in chapter 50-25.1, no person licensed under this chapter may be required to disclose any information acquired in rendering counseling services without the consent of the person who received the counseling services.

Penalty. Any person who violates this chapter is guilty of a class B misdemeanor.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 538

SENATE BILL NO. 2371
(Senators Schoenwald, Tallackson, Thane)
(Representatives Rydell, Goetz, J. DeMers)

CLINICAL LABORATORY PERSONNEL LICENSING

AN ACT to provide for the licensure and regulation of clinical laboratory personnel and to establish a North Dakota board of clinical laboratory practice; to provide a penalty; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of clinical laboratory practice.
2. "Clinical laboratory" means a site where clinical laboratory testing is done.
3. "Clinical laboratory personnel" means all clinical laboratory scientists or medical technologists or specialists, and clinical laboratory technicians or medical laboratory technicians working in a clinical laboratory, but does not include persons employed by a clinical laboratory to perform clerical duties or other duties classified as supportive functions not related to the direct performance of patient tests, such as phlebotomists, does not include clinical laboratory students, and does not include cytologists performing cytology procedures and histologists or histotechnicians performing histology procedures.
4. "Clinical laboratory student" means a person having qualified and enrolled in an approved program of structured clinical education and who is seeking training and experience required to meet minimum qualifications for a license by the board to practice as a clinical laboratory person in this state.
5. "Clinical laboratory testing" means a microbiological, serological, chemical, hematological, radiobioassay, biophysical, or immunological assay which is derived from the human body, to provide information for diagnosis, prevention, or treatment of a disease or assessment of a medical condition.
6. "Consumer" means a person who might use laboratory medicine services or the services of its practitioners, but does not derive such person's livelihood from these services.

7. "National certifying examination" means national examinations given to certify clinical laboratory personnel and recognized by the board.
8. "Screening test" means a test measuring only the approximate value of the analyte being tested and not used for diagnosis.
9. "Specimen" means any material derived from the human body for examination or other procedure for the purpose of providing information for the diagnosis, prevention, or treatment of any disease, impairment, or assessment of the health of humans.
10. "Structured clinical education" means a program accredited by an appropriate accrediting agency to provide a predetermined amount of instruction and experience in clinical laboratory, and approved or modified by the board.

SECTION 2. License required. No person may practice as a clinical laboratory scientist or a clinical laboratory technician unless the person is the holder of a current license issued by the board, or is exempt from licensure.

SECTION 3. Exemptions. The provisions of this chapter do not apply to the following:

1. Physicians duly and currently licensed to practice medicine.
2. Nurses duly and currently licensed to practice nursing and practicing within the scope of the nursing license.
3. Persons performing clinical testing for teaching or research, provided that the results of any examination performed in such laboratories are not used in health maintenance, diagnosis, or treatment of disease.
4. Persons employed by the United States government, or any bureau, division, or agency thereof, and working in a licensed laboratory.
5. Any person in the pursuit of a supervised course of study leading to a degree at an accredited or educational program approved by the board.
6. Phlebotomy personnel performing phlebotomy procedures and bedside screening tests.
7. Persons performing testing for their own personal use and persons performing screening tests for mass screening under appropriate supervision.
8. Agents of the state or federal government performing hematological tests for anemia upon participants of the special supplemental food program for women, infants, and children.

SECTION 4. Powers and duties of the board. In order to enforce and administer this Act, the board shall:

1. Maintain an office to conduct business.

2. Conduct or approve licensing or certification examinations for entry into clinical laboratory practice as authorized under this Act.
3. Issue and renew a license to any person who currently meets the qualifications in the category for which license is sought.
4. Establish fees and receive all moneys collected under this Act.
5. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this Act.
6. Discipline licensees as necessary, which may include reprimand of the licensee, probation, denial, suspension or revocation of license.
7. Adopt rules pursuant to chapter 28-32, necessary for the implementation of this Act, including rules relating to professional licensure and to the establishment of standards of practice for persons holding a license to practice clinical laboratory testing in this state. The rules must specifically address the special needs of rural hospitals and clinics with regard to laboratory personnel.
8. Employ an executive director and such other professional and secretarial staff as may be necessary.
9. Authorize all expenditures necessary for conducting the business of the board. Any balance of fees and other moneys received by the board after payment of expenditures is to be used in administering the provisions of this Act.
10. Establish or approve criteria for the continuing education of clinical laboratory personnel as it may deem reasonably appropriate as a prerequisite to the renewal of any license provided for in this Act, so long as such requirements are uniform as to application, and are reasonably related to the measurement of qualification, performance, or competence desirable and necessary for the protection of the public health.

SECTION 5. Board of clinical laboratory practice - Administration.

1. There is hereby created a North Dakota board of clinical laboratory practice which shall consist of seven persons appointed by the governor, who must be residents of the state for at least two years prior to their appointment and who, except for the consumer members, must be currently engaged in their area of practice.
2. The board must be composed of:
 - a. One physician recommended by the North Dakota pathology organization. The North Dakota pathology organization shall submit to the governor a list of physicians qualified to serve, such list to contain at least three names.

- b. The following laboratory persons, whose names may be included on a list of such persons qualified to serve submitted to the governor by the North Dakota society for medical technology or other interested persons, such list to contain at least three names for each vacancy:
 - (1) One administrative nonphysician clinical laboratory director;
 - (2) One clinical laboratory scientist; and
 - (3) One clinical laboratory technician.
 - c. Two consumer members, each of whom must be a citizen of the United States, a resident of North Dakota for at least two years before the date of appointment, and a current resident of North Dakota.
 - d. The state health officer or such officer's designee, ex officio.
3. The members of the board shall serve for terms of three years, except that members of the first board must be appointed as provided in this chapter within sixty days after the effective date of this chapter for the following terms:
 - a. A nonphysician laboratory director member, and a consumer member each for a term of three years.
 - b. A clinical laboratory technician member and clinical laboratory scientist member for each term of two years.
 - c. A physician laboratory director member and a consumer member each for a term of one year.
 - d. The state officer member or such officer's designee must be appointed and serve ex officio during such term of office in the department of health and consolidated laboratories.
4. Each member of the board shall qualify by taking the oath required by civil officers and shall hold office until the successor is duly appointed and qualified.
5. The governor may remove any board member for good cause after giving that member a written statement of the reason for removal and after the member has had an opportunity for hearing.
6. Whenever any board vacancy shall occur, the appointment authority shall in the same manner as the prior appointment, appoint a successor of like qualifications for the remainder of the unexpired term.
7. The board must be authorized to appoint subcommittees which must be representative of the various disciplines licensed under this Act to assist, advise, and make recommendations to the board.

8. The board shall meet at least once during the first three months of each calendar year and at least one additional meeting must be held before the end of each calendar year. Other meetings may be convened at the call of the board chairperson or the written request of any three board members.
9. In addition to the expenses incurred while engaged in the performance of their duties, each board member shall receive a per diem fee set by the board, not to exceed the fee established by law for the legislative assembly.

SECTION 6. Fees. The board shall set by rule the applicable licensure fee for those persons subject to this Act, including the initial fee, license fee, late renewal fees, and limited permit fees. These fees must be set in such reasonable amount as to reimburse the board for the cost of its services.

SECTION 7. Duties and qualifications of clinical laboratory personnel - Requirements for licensure. An applicant applying for license as a clinical laboratory scientist or clinical laboratory technician shall file a written application provided by the board, along with the appropriate fee, showing to the satisfaction of the board that the applicant is qualified for the said position.

SECTION 8. Clinical laboratory scientist or medical technologist or clinical laboratory specialist - Licensure qualifications.

1. A clinical laboratory scientist or medical technologist has graduated with a bachelor of science or a bachelor of arts degree in a science-related discipline and has passed a national certifying examination approved by the board. Upon receipt of documentation that all necessary educational and experience qualifications for a clinical laboratory scientist or medical technologist have been met, or upon successful completion of an examination approved by the board, the board shall issue a clinical laboratory scientist or medical technologist license to any person meeting the above qualifications.
2. A clinical laboratory scientist or specialist is educated in chemical, physical, or biological science and performs in a clinical laboratory only functions directly related to such person's particular specialty. Upon successful completion of an examination covering only those fields in which an applicant is eligible to be examined, and documentation of competency by a nationally recognized certifying agency, the board shall issue a clinical laboratory specialist license to any person meeting the following minimum qualifications:
 - a. A baccalaureate or higher degree with a major in one of the chemical, physical, or biological sciences.
 - b. Has passed a national certifying examination in a specialty area.

A license issued must be issued as a clinical laboratory specialist followed by designation of area of specialty.

SECTION 9. Clinical laboratory technician or medical laboratory technician - Licensure qualifications. A clinical laboratory technician or medical laboratory technician has successfully completed the academic requirements of an educational program recognized by the board and has passed a national certifying examination approved by the board.

Upon receipt of documentation that all necessary educational and experience qualifications for clinical laboratory technician have been met, or upon successful completion of an examination approved by the board, the board shall issue a clinical laboratory technician license to any person meeting the above qualifications.

SECTION 10. Student work authorization. A clinical laboratory student may perform tests under the supervision of licensed clinical laboratory personnel without being licensed therefor by the board.

SECTION 11. Provisional permits. The board may, under criteria established by the board, grant a limited permit to a person who has completed the education and experience requirements of this Act. Such permit allows the person to practice medical technology in association with licensed clinical laboratory personnel. The permit is valid for no longer than a period of three years or until the person holding the permit is duly issued a license or the permit is revoked by the board.

SECTION 12. Grandfather provisions. Upon receipt of evidence showing that a person is currently employed in the practice of clinical laboratory medicine on the effective date of this Act or has been so employed during the preceding one year for a minimum period of six months, and that person does not meet the criteria established for licensure by the board, the board shall, upon application, issue a qualifying license to such person to continue to practice in a laboratory under their scope of practice existing on the effective date of this Act. Persons licensed under this section must meet the same continuing education requirements as any other licensees.

SECTION 13. Issuance of license. The board shall issue a license to any person who meets the requirements of this Act upon application therefor and payment of the license fee established by the board.

SECTION 14. Renewal of license. A license issued under this Act is subject to biennial renewal and expires unless renewed in the manner prescribed by the board and upon the payment of a renewal fee. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules.

SECTION 15. Supervision and revocation of license - Refusal to renew.

1. The board may deny, refuse to renew, suspend, or revoke a license or permit, or may impose probationary conditions if the licensee or permittee or applicant for a license or permit has been found to have committed unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct includes:
 - a. Obtaining or attempting to obtain a license by means of fraud, deceit, misrepresentation, or concealment of facts.

- b. Being convicted of an offense, as defined by subsection 20 of section 12.1-01-04, and which the board determines has a direct bearing upon a person's ability to serve the public as a licensed clinical laboratory personnel or following the conviction of any offense, the board determines that the person is not sufficiently rehabilitated.
 - c. Violating any lawful order or rule rendered or adopted by the board.
 - d. Violating any provision of this Act.
2. A denial, refusal to renew, suspension revocation, or imposition of probationary conditions upon a licensee or permittee may be ordered by the board after a hearing in the manner provided by rules adopted by the board and in conformance with chapter 28-32. An application for reinstatement may be made to the board one year from the date of the revocation of a license. The board may accept an application for reinstatement, and may hold a hearing to consider such reinstatement.

SECTION 16. Penalty. Any person who violates any provisions of this Act is guilty of a class B misdemeanor.

SECTION 17. APPROPRIATION. There is hereby appropriated out of moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,900, or so much thereof as may be necessary, to the board of clinical laboratory practice for the purpose of carrying out the provisions of this Act for the biennium beginning July 1, 1989, and ending June 30, 1991. Such sums appropriated as are accepted by the board must be returned to the general fund by June 30, 1991, from licensure fees collected by the board.

SECTION 18. EFFECTIVE DATE. Sections 1, 2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 of this Act become effective on July 1, 1990.

Approved April 13, 1989
Filed April 13, 1989

OFFICES AND OFFICERS

CHAPTER 539

SENATE BILL NO. 2269
(Stenehjem)

DISTRICT COURT DEPUTY RESIDENCY

AN ACT to amend and reenact section 44-03-04 of the North Dakota Century Code, relating to residency requirements of deputy clerks of district courts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-03-04. Officials to be residents and citizens - Exception for deputy clerks of district court. No person shall be appointed as deputy in any state, county, or municipal office, nor as a member or officer upon any official board, ~~of any kind,~~ of the state, or of any county or municipality of the state, who is not a citizen of the United States, and who ~~shall not be~~ is not a bona fide resident of the state. However, a clerk of the district court may appoint a deputy who is a bona fide resident of an adjoining county in another state.

Approved April 11, 1989
Filed April 12, 1989

CHAPTER 540

SENATE BILL NO. 2041
(Legislative Council)
(Interim Jobs Development Commission)

ECONOMIC DEVELOPMENT RECORDS CLOSED

AN ACT for the exemption of certain economic development records from disclosure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Certain economic development records exempt from disclosure.

1. The following economic development records and information are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota:
 - a. Records and information pertaining to a prospective location of a business or industry, including the identity, nature, and location of the business or industry, when no previous public disclosure has been made by the business or industry of the interest or intent of the business or industry to locate in, relocate within, or expand within this state. This exemption does not include records pertaining to the application for permits or licenses necessary to do business or to expand business operations within this state, except as otherwise provided by law.
 - b. Trade secrets and commercial or financial information received from a person, business, or industry that is interested in or is applying for or receiving financing or technical assistance, or other forms of business assistance.
2. Section 44-04-19 and section 5 of article XI of the Constitution of North Dakota do not apply to that part of a meeting of a public economic development agency held to consider or discuss records and information exempt from public inspection under subsection 1 if:
 - a. The partial closure of the meeting is authorized under this subsection by a motion made and carried in a meeting open to the public;
 - b. Only the records and information exempt from public inspection under subsection 1 are considered or discussed at the closed portion of the meeting; and
 - c. Final action concerning the records and information is taken at a meeting open to the public.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 541

SENATE BILL NO. 2183
(Committee on Judiciary)
(At the request of the Attorney General)

UNDERCOVER OFFICERS CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to information concerning undercover law enforcement officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Records of undercover law enforcement officers. Records or other information that would reveal the identity, or endanger the life or physical well-being, of an undercover law enforcement officer is confidential and exempt from the provisions of section 44-04-18. For purposes of this section, an "undercover law enforcement officer" means a full-time, salaried employee of a local or state law enforcement agency who acts surreptitiously or poses as someone other than a law enforcement officer while engaging in the investigation of a violation of law.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 542

HOUSE BILL NO. 1193
(Committee on Industry, Business and Labor)
(At the request of the Bank of North Dakota)

TRADE SECRETS AND COMPUTER SOFTWARE CONFIDENTIALITY

AN ACT to provide for confidentiality of certain trade secrets and commercial and financial information obtained by any state agency under a contract or a license agreement and confidentiality of computer software program for which any state agency acquires a copyright or a patent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Confidentiality of trade secrets and commercial and financial information. Trade secrets and commercial and financial information is confidential if of a privileged or confidential nature and obtained by any state agency, institution, department, or board from any person or organization under a contract or license agreement entered into by any state agency, institution, department, or board. The term "trade secrets" includes a computer software program and components of a computer software program which are subject to a copyright or a patent, and any formula, pattern, compilation, program, device, method, technique, or process supplied to any state agency, institution, department, or board which is the subject of efforts by the supplying person or organization to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons or organizations that might obtain economic value from its disclosure or use.

SECTION 2. Confidentiality of computer software programs. Any computer software program or component of a computer software program for which any state agency, institution, department, or board acquires a copyright or a patent is confidential.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 543

HOUSE BILL NO. 1062
(Legislative Council)
(Interim Legislative Procedure and Arrangements Committee)

LEGISLATIVE RECORDS

AN ACT relating to records and information related to the legislative branch;
and declaring an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Access to legislative records and information. The following records, regardless of form or characteristic, of or relating to the legislative council, the legislative assembly, the house of representatives, the senate, or a member of the legislative assembly are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota: a record of a purely personal or private nature, a record that is attorney work product or is attorney-client communication, a record that reveals the content of private communications between a member of the legislative assembly and any person, and, except with respect to a governmental entity determining the proper use of telephone service, a record of telephone usage which identifies the parties or lists the telephone numbers of the parties involved. This section does not apply to any record distributed at a meeting subject to section 44-04-19 and section 5 of article XI of the Constitution of North Dakota.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 544

SENATE BILL NO. 2222
(Committee on Judiciary)
(At the request of the Attorney General)

CRIMINAL INVESTIGATIVE INFORMATION CONFIDENTIAL

AN ACT to provide for an exception to the open records law for law enforcement criminal intelligence and criminal investigative information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Criminal intelligence information and criminal investigative information - Nondisclosure - Record of information maintained.

1. Active criminal intelligence information and active criminal investigative information are exempt from the provisions of section 44-04-18. A criminal justice agency shall maintain a list of all files containing active criminal intelligence and investigative information which have been in existence for more than one year. With respect to each file, the list must contain the file's number or other identifying characteristic, and the date the file was established. The list required under this subsection is subject to section 44-04-18.
2. "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Criminal intelligence information must be considered "active" as long as it is related to intelligence gathering conducted with a reasonable good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
3. "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Criminal investigative information must be considered "active" as long as it is related to an ongoing investigation that is continuing with a reasonable good faith anticipation of securing an arrest or prosecution in the foreseeable future.
4. "Criminal justice agency" means any law enforcement agency, or prosecutor. The term also includes any other unit of government charged by law with criminal law enforcement duties or having custody of criminal intelligence or investigative information for

the purpose of assisting law enforcement agencies in the conduct of active criminal investigations or prosecutions.

5. "Criminal intelligence and investigative information" does not include:
 - a. Arrestee description including name, date of birth, address, race, sex, physical description, and occupation of arrestee.
 - b. Facts concerning the arrest, including the cause of arrest and the name of the arresting officer.
 - c. Conviction information, including the name of any person convicted of a criminal offense.
 - d. Disposition of all warrants, including orders signed by a judge of any court commanding a law enforcement officer to arrest a particular person.
 - e. A chronological list of incidents, including initial offense report information showing the offense, date, time, general location, officer, and a brief summary of what occurred.
 - f. A crime summary, including a departmental summary of crimes reported and public calls for service by classification, nature, and number.
 - g. Radio log, including a chronological listing of the calls dispatched.
 - h. General registers, including jail booking information.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 545

SENATE BILL NO. 2231
(Committee on Judiciary)
(At the request of the Attorney General)

PUBLIC AGENCY ATTORNEY CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to exemptions from the open meetings and open records laws for attorney work product and attorney consultation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Open records and open meetings - Exemptions for attorney work product and attorney consultation.

1. Attorney work product is exempt from the provisions of section 44-04-18. Attorney work product and copies thereof shall not be open to public inspection, examination, or copying unless specifically made public by the public agency receiving such work product.
2. Attorney consultation is exempt from the provisions of section 44-04-19. That portion of a meeting of a public agency during which an attorney consultation occurs may be closed, by a majority vote of the public agency in an open meeting for the purpose of having the attorney consultation. The remainder of the meeting, where no attorney consultation occurs, is an open meeting unless a specific exemption is otherwise applicable.
3. "Attorney work product" means any document or record which:
 - a. Was prepared by an attorney representing a public agency or prepared at such an attorney's express direction;
 - b. Reflects a mental impression, conclusion, litigation strategy, or legal theory of that attorney or the agency; and
 - c. Was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings in anticipation of imminent civil or criminal litigation or adversarial administrative proceedings.
4. "Attorney consultation" means any discussion between a public agency and its attorney in instances in which the public agency seeks or receives the attorney's advice concerning pending civil or criminal litigation or pending adversarial administrative proceedings.

5. "Public agency" means all public or governmental bodies, boards, bureaus, commissions, or agencies of the state, or any political subdivision of the state, or organizations or agencies supported in whole or in part by public funds or expending public funds.
6. "Adversarial administrative proceedings" include only those administrative proceedings where the administrative agency acts as a complainant or respondent in an adverse administrative proceeding before another agency. This term does not refer to those instances where the administrative agency acts in its own rulemaking, adjudicative, or quasi-judicial capacity.
7. Following the final completion of the civil or criminal litigation or the adversarial administrative proceeding, including the exhaustion of all appellate remedies, attorney work product must be made available for public disclosure by the public agency.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 546

HOUSE BILL NO. 1356
(Representative Ulmer)
(Senators Satrom, Mushik)

STATE TRAVEL EXPENSE PREPAYMENT

AN ACT to create and enact a new section to chapter 44-08 of the North Dakota Century Code, relating to prepayment of travel expenses for state officers and employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 44-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Prepayment of travel expenses of state officers and employees. Any travel expense, including airline tickets and registration fees, that must be incurred more than five weeks in advance of approved travel of any elected or appointed officer, employee, representative, or agent of this state to meet necessary deadlines or to obtain low rates must be purchased prepaid by the state. No state entity may require an officer, employee, representative, or agent of the state to pay these expenses.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 547

HOUSE BILL NO. 1152
(Committee on State and Federal Government)
(At the request of the Secretary of State)

NOTARY SEALS

AN ACT to create and enact a new section to chapter 44-08 of the North Dakota Century Code, relating to validation of certificates of acknowledgment; and to amend and reenact section 44-08-06 of the North Dakota Century Code, relating to the requirements of notary seals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-08-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

44-08-06. Dimensions of seal of court or officer. Upon every seal of a court or officer of this state required or authorized to have a seal, there must be engraved the words "State of North Dakota" and the name of the court or office in which the seal is to be used. All such seals, except the great seal, must be ~~embossed~~, surrounded by a border, and either one and five-eighths ~~of an~~ inch [41.28 millimeters] in diameter or of a rectangular design, seven-eighths inch [22.23 millimeters] vertically by two and five-eighths inches [66.68 millimeters] horizontally.

SECTION 2. A new section to chapter 44-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

Validation - Certificates of acknowledgment. All certificates of acknowledgment by notaries public on all documents filed for record with a register of deeds in the state, notwithstanding any defects or irregularities with the notary seal, are hereby validated, ratified, approved, and confirmed. Notwithstanding section 44-08-06, all seals of a court or officer of this state are binding, legal, and enforceable. The provisions of this section relating to validation of acknowledgments are applicable to all documents filed with any county register of deeds in the state after July 1, 1987.

Approved April 13, 1989
Filed April 13, 1989

PARTNERSHIPS

CHAPTER 548

SENATE BILL NO. 2101

(Committee on Industry, Business and Labor)

(At the request of the Commission on Uniform State Laws)

UNIFORM LIMITED PARTNERSHIP ACT CHANGES

AN ACT to amend and reenact subsections 1 and 6 of section 45-10.1-01, sections 45-10.1-05, 45-10.1-08, 45-10.1-09, 45-10.1-11, 45-10.1-12, 45-10.1-18, 45-10.1-20, 45-10.1-22, subsection 2 of section 45-10.1-23, section 45-10.1-25, subsections 4 and 5 of section 45-10.1-26, sections 45-10.1-31, 45-10.1-32, 45-10.1-33, 45-10.1-34, 45-10.1-36, 45-10.1-38, subsection 3 of section 45-10.1-41, and sections 45-10.1-45, 45-10.1-47, 45-10.1-52, 45-10.1-60, and 45-12-01 of the North Dakota Century Code, relating to the Uniform Limited Partnership Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 6 of section 45-10.1-01 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. "Certificate of limited partnership" means the certificate referred to in section 45-10.1-08, and the certificate as amended or restated.
6. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement ~~and named in the certificate of limited partnership as a limited partner~~.

SECTION 2. AMENDMENT. Section 45-10.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-05. (105) Records to be kept.

1. Each limited partnership shall keep at the office referred to in subsection 1 of section 45-10.1-04 the following:
 - ~~1- a.~~ A current list of the full name and last known business address of each partner ~~set forth, separately identifying the general partners in alphabetical order and the limited partners in alphabetical order~~.
 - 2- b. A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed.

- ~~3-~~ c. Copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years.
- ~~4-~~ d. Copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years. ~~Those records~~
- e. Unless contained in a written partnership agreement, a writing setting out:
 - (1) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute.
 - (2) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made.
 - (3) Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution.
 - (4) Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.
- 2. Records kept under this section are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours.

SECTION 3. AMENDMENT. Section 45-10.1-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-08. (201) Certificate of limited partnership.

- 1. In order to form a limited partnership, ~~two or more persons must execute a certificate of limited partnership. The certificate must be executed and filed in the office of the secretary of state and. The certificate must set forth:~~
 - a. The name of the limited partnership.
 - b. The general character of its business.
 - c. The address of the office and the name and address of the agent for service of process required to be maintained by section 45-10.1-04.
 - d. The name and the business address of each general partner, specifying separately the general partners and limited partners.
 - ~~e. The amount of cash and a description and statement of the agreed value of the other property or services contributed by~~

each partner and which each partner has agreed to contribute in the future.

- f. The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made.
 - g. Any power of a limited partner to grant the right to become a limited partner to an assignee of any part of the limited partner's partnership interest, and the terms and conditions of the power.
 - h. If agreed upon, the time at which or the events on the happening of which a partner may terminate membership in the limited partnership and the amount of, or the method of determining, the distribution to which the partner may be entitled respecting the partner's partnership interest, and the terms and conditions of the termination and distribution.
 - i. Any right of a partner to receive distributions of property, including cash from the limited partnership.
 - j. Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution.
 - k. Any time at which or events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.
 - l. Any right of the remaining general partners to continue the business on the happening of an event of withdrawal of a general partner.
- m. e. The latest date upon which the limited partnership is to dissolve.
- f. Any other matters the general partners determine to include therein.
2. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

SECTION 4. AMENDMENT. Section 45-10.1-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-09. (202) Amendment to certificate.

1. A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate must set forth all of the following:
 - a. The name of the limited partnership.

- b. The date of filing the certificate.
- c. The amendment to the certificate.
2. An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed within thirty days after the happening of any of the following events:
 - a. ~~A change in the amount or character of the contribution of any partner, or in any partner's obligation to make a contribution.~~
 - b- The admission of a new general partner.
 - ~~c-~~ b. The withdrawal of a general partner.
 - ~~d-~~ c. The continuation of the business under section 45-10.1-47 after an event of withdrawal of a general partner.
 - ~~e-~~ d. A change of office or an agent.
3. A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate, ~~but an amendment to show a change of address of a limited partner need be filed only once every twelve months.~~
4. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.
5. No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection 2 if the amendment is filed within the thirty-day period specified in subsection 2.
6. A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

SECTION 5. AMENDMENT. Section 45-10.1-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-11. (204) Execution of certificates.

1. Each certificate required by sections 45-10.1-08 through 45-10.1-19 to be filed in the office of the secretary of state must be executed in the following manner:
 - a. An original certificate of limited partnership must be signed by all general partners ~~named therein.~~
 - b. A certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner ~~or whose contribution is described as having been increased.~~

- c. A certificate of cancellation must be signed by all general partners.
2. Any person may sign a certificate by an attorney in fact, but a power of attorney to sign a certificate relating to the admission, ~~or increased contribution, of a general partner~~ must specifically describe the admission ~~or increase~~.
3. The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

SECTION 6. AMENDMENT. Section 45-10.1-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-12. (205) ~~Amendment or cancellation~~ Execution by judicial act. If a person required by section 45-10.1-11 to execute ~~a any certificate of amendment or cancellation~~ fails or refuses to do so, any other ~~partner, and any assignee of a partnership interest,~~ person who is adversely affected by the failure or refusal, may petition the district court to direct the ~~amendment or cancellation~~ execution of the certificate. If the court finds that ~~the amendment or cancellation~~ it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate ~~of amendment or cancellation.~~

SECTION 7. AMENDMENT. Section 45-10.1-18 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-18. (208) Notice Scope of notice. The fact that a certificate of limited partnership is on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated therein as ~~limited general~~ partners are ~~limited general~~ partners, but it is not notice of any other fact.

SECTION 8. AMENDMENT. Section 45-10.1-20 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-20. (301) Admission of ~~additional~~ limited partners.

1. A person becomes a limited partner:
 - a. At the time the limited partnership is formed; or
 - b. At any later time specified in the records of the limited partnership for becoming a limited partner.
2. After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:
 - a. In the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the

partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners.

- b. In the case of an assignee of a partnership interest of a partner who has the power, as provided in section 45-10.1-45, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

2- In each case under subsection 1, the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.

SECTION 9. AMENDMENT. Section 45-10.1-22 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-22. (303) Liability to third parties.

1. Except as provided in subsection 4, a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of the limited partner's rights and powers as a limited partner, the limited partner ~~takes part~~ participates in the control of the business. However, if the limited ~~partner's participation~~ partner participates in the control of the business ~~is not substantially the same as the exercise of the powers of a general partner~~, the limited partner is liable only to persons who transact business with the limited partnership with actual knowledge of the limited partner's participation in control reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.
2. A limited partner does not participate in the control of the business within the meaning of subsection 1 solely by doing one or more of the following:
 - a. Being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation.
 - b. Consulting with and advising a general partner with respect to the business of the limited partnership.
 - c. Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership.
 - d. Approving or disapproving an amendment to the partnership agreement. Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership.
 - e. Voting on Requesting or attending a meeting of partners.

f. Proposing, approving, or disapproving, by voting or otherwise, one or more of the following matters:

- (1) The dissolution and winding up of the limited partnership.
- (2) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership ~~other than in the ordinary course of its business.~~
- (3) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business.
- (4) A change in the nature of the business.
- (5) The admission or removal of a general partner.
- (6) The admission or removal of a limited partner.
- (7) A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners.
- (8) An amendment to the partnership agreement or certificate of limited partnership.
- (9) Matters related to the business of the limited partnership not otherwise enumerated in this subsection which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners.

g. Winding up the limited partnership pursuant to section 45-10.1-49.

h. Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection.

3. The enumeration in subsection 2 does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by the limited partner in the business of the limited partnership.
4. A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by subsection 2 of section 45-10.1-02, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

SECTION 10. AMENDMENT. Subsection 2 of section 45-10.1-23 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A person who makes a contribution of the kind described in subsection 1 is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws

and an appropriate certificate is filed to show withdrawal, or before an appropriate certificate is filed to show ~~the person's status as a limited partner and, in the case of an amendment, after expiration of the thirty-day period for filing an amendment relating to the person as a limited partner under section 45-10.1-09~~ that the person is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

SECTION 11. AMENDMENT. Section 45-10.1-25 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-25. (401) Admission of additional general partners. After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted only as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the specific written consent of each partner all partners.

SECTION 12. AMENDMENT. Subsections 4 and 5 of section 45-10.1-26 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. Unless otherwise provided in writing in the certificate of limited partnership agreement, the general partner:
 - a. Makes an assignment for the benefit of creditors.
 - b. Files a voluntary petition in bankruptcy.
 - c. Is adjudicated a bankrupt or insolvent.
 - d. Files a petition or answer seeking for the general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation.
 - e. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in any proceeding of this nature.
 - f. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties.
5. Unless otherwise provided in writing in the certificate of limited partnership agreement, one hundred twenty days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties, the appointment is not vacated or

stayed or, within ninety days after the expiration of a stay, the appointment is not vacated.

SECTION 13. AMENDMENT. Section 45-10.1-31 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-31. (502) Liability for contribution.

1. A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.
2. Except as provided in the ~~certificate of limited~~ partnership agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if the partner is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the ~~certificate of limited~~ partnership records required to be kept pursuant to section 45-10.1-05, of the stated contribution that has not been made.
- ~~3.~~ 3. Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or whose claim arises, otherwise acts in reliance on that obligation after the filing of the certificate of limited partnership or an amendment thereto partner signs a writing which, ~~in either case,~~ reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation.

SECTION 14. AMENDMENT. Section 45-10.1-32 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-32. (503) Sharing of profits and losses. The profits and losses of a limited partnership must be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses must be allocated on the basis of the value, as stated in the ~~certificate of limited~~ partnership records required to be kept pursuant to section 45-10.1-05, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

SECTION 15. AMENDMENT. Section 45-10.1-33 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-33. (504) Sharing of distributions. Distributions of cash or other assets of a limited partnership must be allocated among the partners,

and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions must be made on the basis of the value, as stated in the certificate of limited partnership records required to be kept pursuant to section 45-10.1-05, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

SECTION 16. AMENDMENT. Section 45-10.1-34 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-34. (601) Interim distributions. Except as provided in sections 45-10.1-34 through 45-10.1-41, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the dissolution and winding up thereof-

- 1- ~~To to the extent and at the times or upon the happening of the events specified in the partnership agreement; and~~
- 2- ~~If any distribution constitutes a return of any part of the partner's contribution under subsection 2 of section 45-10.1-38; to the extent and at the times or upon the happening of the events specified in the certificate of limited partnership.~~

SECTION 17. AMENDMENT. Section 45-10.1-36 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-36. (603) Withdrawal of limited partner. A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in the certificate of limited partnership and in accordance with writing in the partnership agreement. If the certificate agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at the general partner's address on the books of the limited partnership at its office in this state.

SECTION 18. AMENDMENT. Section 45-10.1-38 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-38. (605) Distribution in kind. Except as provided in writing in the certificate of limited partnership agreement, a partner, regardless of the nature of the partner's contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset which is equal to the percentage in which the partner shares in distributions from the limited partnership.

SECTION 19. AMENDMENT. Subsection 3 of section 45-10.1-41 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. A partner receives a return of the partner's contribution to the extent that a distribution to the partner reduces the partner's share of the fair value of the net assets of the limited partnership below the value, as set forth in the certificate of limited partnership records required to be kept pursuant to section 45-10.1-05, of the partner's contribution that has not been distributed to the partner.

SECTION 20. AMENDMENT. Section 45-10.1-45 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-45. (704) Right of assignee to become limited partner.

1. An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:
 - a. The assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership agreement; or
 - b. All other partners consent.
2. An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is liable for the obligations of the assignor to make and return contributions as provided in sections ~~45-10.1-34~~ 45-10.1-30 through 45-10.1-41. However, the assignee is not obligated for liabilities unknown to the assignee at the time the assignee became a limited partner and which could not be ascertained from the certificate of limited partnership.
3. If an assignee of a partnership interest becomes a limited partner, the assignor is not released from the assignor's liability to the limited partnership under sections 45-10.1-17 and 45-10.1-31.

SECTION 21. AMENDMENT. Section 45-10.1-47 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-47. (801) Nonjudicial dissolution. A limited partnership is dissolved and its affairs must be wound up upon the happening of the first to occur of the following:

1. At the time or upon specified in the certificate of limited partnership.
2. Upon the happening of events specified in writing in the certificate of limited partnership agreement.
- ~~2-~~ 3. Written consent of all partners.
- ~~3-~~ 4. An event of withdrawal of a general partner unless at the time there is at least one other general partner and the certificate of

limited written provisions of the partnership permits agreement permit the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal; if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired.

~~4~~ 5. Entry of a decree of judicial dissolution under section 45-10.1-48.

SECTION 22. AMENDMENT. Section 45-10.1-52 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-52. (902) Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state, on forms prescribed and furnished by the secretary of state, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth all of the following:

1. The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state.
2. The state and date of its formation.
3. The general character of the business it proposes to transact in this state.
4. The name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state.
5. A statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence.
6. The address of the principal office of the foreign limited partnership.
7. The name and business address of each general partner.
8. The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

The application must be accompanied by a certificate of identification, existence, and status of a foreign limited partnership, duly certified by the

proper officer of the state or country under the laws of which it is organized.

SECTION 23. AMENDMENT. Section 45-10.1-60 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-60. (1002) Proper plaintiff. In a derivative action, the plaintiff must be a partner at the time of bringing the action, and must have been a partner at the time of the transaction of which the plaintiff complains or the plaintiff's status as a partner had must have devolved upon the plaintiff by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

SECTION 24. AMENDMENT. Section 45-12-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-12-01. Provisions for existing limited partnerships.

1. A limited or special partnership formed under any statute of this state prior to July 1, 1959, until or unless it becomes a limited partnership under chapter 45-10.1, continues to be governed by the provisions of chapter 45-03 of the North Dakota Revised Code of 1943, through June 30, 1986, but the partnership may not be renewed unless so provided in the original agreement.
2. A limited partnership formed under former chapter 45-10 prior to July 1, 1985, until or unless it becomes a limited partnership under chapter 45-10.1, continues to be governed by the provisions of former chapter 45-10, through June 30, 1986, but the partnership may not be renewed unless so provided in the original agreement.
3. After June 30, 1986, chapter 45-10.1 applies to all existing limited partnerships formed under any law of this state providing for formation of limited partnerships. All provisions of partnership agreements that may be included in the partnership agreements under chapter 45-10.1 remain in effect. All provisions of the partnership agreements that are inconsistent with chapter 45-10.1 cease to be effective on July 1, 1986. Any provisions required by chapter 45-10.1 to be contained in the partnership agreement that do not appear in the partnership agreement are read into them as a matter of law.
4. Unless otherwise agreed by the partners, the applicable provisions of existing law governing allocation of profits and losses, rather than the provisions of section 45-10.1-32, distributions to a withdrawing partner, rather than the provisions of section 45-10.1-37, and distributions of assets upon the winding up of a limited partnership, rather than the provisions of section 45-10.1-50, govern limited partnerships formed before July 1, 1985.
5. The repeal of chapter 45-10 does not impair, or otherwise affect the organization or the continued existence of a limited partnership existing prior to July 1, 1985, nor does the repeal of chapter 45-10 as the result of enactment of chapter 45-10.1 impair any contract or affect any right accrued before July 1, 1985.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 549

HOUSE BILL NO. 1563
(Oban, Vander Vorst)

PARTNERSHIP NAMES AND DOCUMENTS

AN ACT to amend and reenact sections 45-10.1-16, 45-11-02, 45-11-04.1, 45-11-05, and 45-11-06 of the North Dakota Century Code, relating to new and renewed fictitious name certificates and records filed with the secretary of state with respect to limited partnerships and fictitious partnership names.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 45-10.1-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-10.1-16. Duties of the secretary of state. The secretary of state shall maintain an alphabetical index of all limited partnerships and foreign limited partnerships on file with that office. All documents filed with the secretary of state pursuant to under this chapter must be retained in that office until they the documents have been committed to microcopy, at which time the documents may be returned to the limited partnership or foreign limited partnership destroyed.

SECTION 2. AMENDMENT. Section 45-11-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-02. How certificate executed - Content. A certificate filed with the secretary of state as provided in section 45-11-01 must be signed by one or more of the general partners and acknowledged before some officer authorized to take acknowledgments of conveyances of real property. The certificate must state the fictitious name, the names in full of all the members of the partnership general partners, their places of residence, and the address of the principal place of business.

SECTION 3. AMENDMENT. Section 45-11-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-04.1. Renewal. Any fictitious name certificate filed under this chapter must be renewed every five years from the date of the initial filing, except that those filings existing prior to July 1, 1985, must be required to file the statement of renewal by July 1, 1987, and then every five years thereafter. The statement of renewal shall must be executed by the partnership on forms prescribed and furnished by the secretary of state which are sent to the address of the principal place of business at least sixty days prior to before the deadline for filing. The statement must include the fictitious name of the partnership, the state or country of organization, the address of the principal place of business, the names and addresses of all

~~members general partners~~, and a statement that the partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the filing fee of twenty-five dollars has been paid, the secretary of state shall file the ~~same statement~~. If the secretary of state finds that it does not so conform, the secretary of state shall promptly return the ~~same statement~~ to the partnership for any necessary corrections, in which event, the fictitious name certificate is subject to cancellation if the statement is not returned corrected within thirty days after the statement was returned for corrections. If any partnership fails to file the statement of renewal when due, the fictitious name certificate must be canceled by the secretary of state and notice of such cancellation must be mailed to the address of the principal place of business.

SECTION 4. AMENDMENT. Section 45-11-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-05. New certificate required when members changed. Whenever there is a change in the general partners who are members of a partnership transacting business in this state under a fictitious name, or in a designation which does not show the names of the persons interested as general partners in the business, except in a case mentioned in section 45-11-03, a new certificate must be filed with the secretary of state as required by this chapter upon the formation of ~~such the~~ partnership.

SECTION 5. AMENDMENT. Section 45-11-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

45-11-06. Duty of secretary of state regarding fictitious name certificate. The secretary of state ~~must~~ shall keep an alphabetical file of the fictitious names filed with ~~him pursuant to the secretary of state under~~ this chapter. All documents filed with the secretary of state ~~pursuant to under~~ this chapter must be retained in that office until ~~they~~ the documents have been committed to microcopy, at which time the documents may be ~~returned to the partnership destroyed~~.

Approved April 11, 1989
Filed April 12, 1989

CHAPTER 550

HOUSE BILL NO. 1157
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

FICTITIOUS PARTNERSHIP NAME CANCELLATION

AN ACT to create and enact a new section to chapter 45-11 of the North Dakota Century Code, relating to fictitious partnership names.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 45-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cancellation. The secretary of state shall cancel any fictitious name upon written request for cancellation, from one or more partners, with the filing fee of ten dollars.

Approved March 14, 1989
Filed March 15, 1989

PRINTING LAWS

CHAPTER 551

HOUSE BILL NO. 1202

(Committee on State and Federal Government)

(At the request of the Office of Management and Budget)

STATE LAWS COPY COSTS

AN ACT to amend and reenact section 46-04-01 of the North Dakota Century Code, relating to the distribution of state laws to offices and departments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 46-04-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

46-04-01. Official distribution of state laws - Secretary of state to control. Each member of the legislative assembly for himself and each constitutional officer of the state and each judge of the supreme and district courts for the use of their respective offices and departments shall be entitled to receive from the state a copy of any publication of the laws of the state and of any compilation or codification thereof published under authority of the state. The district court in every county in the state shall be entitled to a copy of such publications. The codification of laws of the state received by each member of the legislative assembly is subject to section 54-03-23. The secretary of state shall designate other offices and agencies of the state that shall be entitled to receive copies of any such publication of the laws for the use of such state offices and agencies and also shall determine the number of copies of any publication to be received by any recipient in a distribution under the provisions of this section, if more than one copy shall be needed by such recipient for official use. All agencies that are funded entirely from special state funds or federal funds must be charged for the actual cost of each copy of such publications that the agency requests.

Approved March 14, 1989

Filed March 15, 1989

PROPERTY

CHAPTER 552

SENATE BILL NO. 2328
(Senator Krauter)
(Representative Goetz)

SOVEREIGN LANDS

AN ACT to create and enact a new chapter to title 61 of the North Dakota Century Code, relating to the transfer of possessory interests in and the management of sovereign lands; to amend and reenact section 47-06-08 and subsection 13 of section 61-24-08 of the North Dakota Century Code, relating to the management of sovereign lands and the powers of the Garrison Diversion Conservancy District to use sovereign lands; and to repeal chapter 15-08.2 of the North Dakota Century Code, relating to the transfer of possessory interests in and the management of sovereign lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-06-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-06-08. Islands and relict lands in navigable streams belong to state. Islands and accumulations of land formed in the beds of streams which are navigable belong to the state, if there is no title or prescription to the contrary. The control and management, including the power to execute surface and mineral leases, of islands, relictions, and accumulations of land owned by the state of North Dakota in navigable streams and waters and the beds thereof, shall be in the board of university and school lands governed by section 3 of this Act. ~~All income and proceeds derived from such lands must be deposited in the lands and minerals trust fund. This section may not be construed as affecting or changing the provisions of any contract already executed by or on behalf of the state of North Dakota or any department or agency thereof concerning such lands and does not apply to lands within the Garrison Diversion Conservancy District.~~

SECTION 2. AMENDMENT. Subsection 13 of section 61-24-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13. To exercise the control and management, including the power to dedicate to public use or to donate and convey to the United States for authorized purposes of the Garrison Diversion Unit, lands owned by the state of North Dakota in navigable streams and waters, including the bed thereof, where such lands lie within the district, as now constituted or may hereafter be modified west of the ninety-eighth meridian use navigable lakes and streams within the conservancy district for holding, impounding, and conveying water of the Garrison Diversion Unit.

SECTION 3. A new chapter to title 61 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Board" means the sovereign lands advisory board.
2. "Board of university and school lands" means that entity created by section 15-01-01.
3. "Sovereign lands" means those beds, islands, accretions, and relictions lying within the ordinary high watermark of navigable lakes and streams.
4. "State engineer" means the person appointed by the state water commission pursuant to section 61-03-01.

Administration of sovereign lands. All sovereign lands of the state must be administered by the state engineer and the board of university and school lands subject to the provisions of this chapter. Lands managed pursuant to this chapter are not subject to leasing provisions found elsewhere in this code.

Transfer of possessory interests in real property. All possessory interests now owned or that may be acquired except oil, gas, and related hydrocarbons, in the sovereign lands of the state owned or controlled by the state or any of its officers, departments, or the Bank of North Dakota, together with any future increments, are transferred to the state of North Dakota, acting by and through the state engineer. All such possessory interests in oil, gas, and related hydrocarbons in the sovereign lands of the state are transferred to the state of North Dakota, acting by and through the board of university and school lands. These transfers are self-executing. No evidence other than the provisions of this chapter is required to establish the fact of transfer of title to the state of North Dakota, acting by and through the state engineer and board of university and school lands. Proper and sufficient delivery of all title documents is conclusively presumed.

Existing contracts and encumbrances recognized. The transfers made by this chapter are subject to all existing contracts, rights, easements, and encumbrances made or sanctioned by the state or any of its officers or departments.

Duties and powers of the state engineer. The state engineer shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all rights of the owner in its own name; may issue and enforce administrative orders and recover the cost of the enforcement from the party against which enforcement is sought; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to such assets, whether such agreements were made heretofore, or are made hereafter.

Duties and powers of the board of university and school lands. The board of university and school lands shall manage, operate, and supervise all properties transferred to it by this chapter; may enter into any agreements regarding such property; may enforce all subsurface rights of the owner in its own name; and may make and execute all instruments of release or conveyance as may be required pursuant to agreements made with respect to

such assets, whether such agreements were made heretofore, or are made hereafter.

Deposit of income. All income derived from the lease and management of the lands acquired by the state engineer and board of university and school lands pursuant to this chapter and not belonging to other trust funds must be deposited in the lands and minerals trust fund.

Advisory board - Responsibilities. There is created a sovereign lands advisory board. The board's responsibility is to advise the state engineer and the board of university and school lands on general policies as well as specific projects, programs, and uses regarding sovereign lands. The board, being solely advisory, has no authority to require the state engineer or the board of university and school lands to implement or otherwise accept the board's recommendations.

Members of the board - Organization - Meetings.

1. The board consists of the manager of the Garrison Diversion Conservancy District, the state engineer, the commissioner of university and school lands, the director of state parks and recreation, the state game and fish commissioner, and the state health officer, or their representative.
2. The state engineer is the board's secretary.
3. The board shall meet at least four times a year at the office of the state engineer, or at any other place decided upon by the board.
4. The board may adopt rules to govern its activities.

SECTION 4. REPEAL. Chapter 15-08.2 of the North Dakota Century Code is hereby repealed.

Approved April 12, 1989
Filed April 12, 1989

CHAPTER 553

SENATE BILL NO. 2106
(Committee on Industry, Business and Labor)
(At the request of the Attorney General)

SECURITY DEPOSIT ITEMIZATION

AN ACT to amend and reenact subsection 2 of section 47-16-07.1 of the North Dakota Century Code, relating to the application of security deposits by lessors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 47-16-07.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A lessor may apply security deposit money and accrued interest upon termination of a lease towards:
 - a. Any damages the lessor has suffered by reason of deteriorations or injuries to the real property or dwelling through the negligence of the lessee or his guest.
 - b. Any unpaid rent.
 - c. The costs of cleaning or other repairs which were the responsibility of the lessee, and which are necessary to return the dwelling unit to its original state when the lessee took possession, reasonable wear and tear excepted.

Application of any portion of a security deposit towards damages not paid to the lessee upon termination of the lease shall be itemized by the lessor. Such itemization together with the amount due shall be delivered or mailed to the lessee at the last address furnished lessor, along with a written notice within thirty days after termination of the lease and delivery of possession by the lessee. The notice shall contain a statement of any amount still due the lessor or the refund due the lessee. A lessor is not required to pay interest on security deposits if the period of occupancy was less than nine months in duration.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 554

SENATE BILL NO. 2301
(Olson, Maxson)

PLATTED LAND HOMESTEAD EXEMPTION WAIVER

AN ACT to amend and reenact section 47-18-05.1 of the North Dakota Century Code, relating to waiver of homestead exemptions on platted property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-18-05.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-18-05.1. Waiver of homestead exemption - Notice required -
Exemption for platted property.

1. All mortgages on homesteads executed after June 30, 1987, which are not purchase money agreements must contain the following statement printed in a conspicuous manner, and must be signed and dated by the person waiving the exemption at the time the contract is executed:

I understand that homestead property is in many cases protected from the claims of creditors and exempt from judicial sale, and that, by signing this contract, I voluntarily give up my right to this protection for this property with respect to claims based upon this contract.

2. This section does not apply to mortgages on property platted under chapter 40-50.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 555

HOUSE BILL NO. 1377
(Kneil)

PLANE COORDINATE SYSTEM

AN ACT to amend and reenact sections 47-20.2-01, 47-20.2-02, 47-20.2-03, 47-20.2-04, 47-20.2-05, and 47-20.2-06 of the North Dakota Century Code, relating to the North Dakota plane coordinate system; and to repeal sections 47-20.2-07, 47-20.2-08, and 47-20.2-09 of the North Dakota Century Code, relating to the North Dakota plane coordinate system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-20.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-20.2-01. Purpose of chapter North Dakota coordinate system zones defined. It is the purpose of this chapter to recognize and adopt for the state of North Dakota the system of plane coordinates which has been established by the United States coast and geodetic survey. It is not the purpose of this chapter to affect existing surveys; but this chapter shall not preclude the use of the plane coordinate system in updating existing surveys. The systems of plane coordinates which have been established by the national oceanic and atmospheric administration national ocean survey/national geodetic survey or its successors for defining and stating the geographic positions or locations of points on the surface of the earth within this state are, as of the effective date of this Act, to be known and designated as the North Dakota coordinate system of 1927 and the North Dakota coordinate system of 1983. For the purpose of the use of this system these systems, the state is divided into a north zone and a south zone:

1. The area now included in the following counties shall constitute constitutes the north zone: Divide, Williams, McKenzie, Mountrail, Burke, Renville, Ward, McLean, Bottineau, McHenry, Sheridan, Pierce, Rolette, Towner, Benson, Wells, Foster, Eddy, Ramsey, Cavalier, Pembina, Walsh, Nelson, Grand Forks, Griggs, Steele, Traill.
2. The area now included in the following counties shall constitute constitutes the south zone: Dunn, Golden Valley, Slope, Bowman, Adams, Hettinger, Stark, Mercer, Oliver, Morton, Grant, Sioux, Emmons, Burleigh, Kidder, Logan, McIntosh, Stutsman, Barnes, LaMoure, Dickey, Cass, Ransom, Sargent, Richland.

SECTION 2. AMENDMENT. Section 47-20.2-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-20.2-02. Zone designation in coordinate system North Dakota coordinate system names defined. As established for use in the north zone,

the North Dakota coordinate system ~~shall be~~ of 1927 or the North Dakota coordinate system of 1983 is named, and in any land description in which it is used it ~~shall~~ must be designated the "~~North~~ North Dakota coordinate system of 1927, north ~~zone~~" zone, or the North Dakota coordinate system of 1983, north zone. As established for use in the south zone, the North Dakota coordinate system ~~shall be~~ of 1927 or the North Dakota coordinate system of 1983 is named, and in any land description in which it is used it ~~shall~~ must be designated the "~~North~~ North Dakota coordinate system of 1927, south ~~zone~~" zone, or the North Dakota coordinate system of 1983, south zone.

SECTION 3. AMENDMENT. Section 47-20.2-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-20.2-03. Plane coordinates North Dakota coordinate system defined. The plane ~~coordinates of~~ coordinate values for a point on the earth's surface, ~~to be used in expressing the geographic position or location of such point in the appropriate zone of this system, shall consist of two distances, expressed in United States survey feet [meters] and decimals of a foot [meter] when using the North Dakota coordinate system of 1927. One of these distances, to be known as the X-coordinate, shall give the position in an east-and-west east-west direction; the other, to be known as the Y-coordinate, shall give the position in a north-and-south north-south direction. These coordinates shall be made to depend upon and conform to the coordinates, on the North Dakota coordinate system, of the triangulation and traverse stations of the United States coast and geodetic survey within the state of North Dakota; as those coordinates have been determined by the said survey plane rectangular coordinate values for the monumented points of the North American horizontal geodetic control network as published by the national ocean survey/national geodetic survey, or its successors, and the plane coordinates which have been computed on the systems defined in this chapter. Any such station may be used for establishing a survey connection to either North Dakota coordinate system. For the purposes of converting coordinates of the North Dakota coordinate system of 1983 from meters to feet, the international survey foot must be used. The conversion factor is: one foot equals 0.3048 meter exactly.~~

SECTION 4. AMENDMENT. Section 47-20.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-20.2-04. Reference to tracts extending into other coordinate zones: ~~When any tract of land to be defined by a single description extends from one into the other of the coordinate zones, the positions of all points on its boundaries may be referred to either of the two zones, the zone which is used being specifically named in the description. Federal and state coordinate description same tract - Federal precedence. Whenever coordinates based on the North Dakota coordinate system are used to describe any tract of land which in the same document is also described by reference to any subdivision, line, or corner of the United States public land surveys, the description by coordinates must be construed as supplemental to the basic description of each subdivision, line, or corner contained in the official plats and field notes filed of record, and, in the event of any conflict, the description by reference to the subdivision, line, or corner of the United States public land surveys prevails over the description by coordinates, unless the coordinates are upheld by adjudication, at which time the coordinate description will prevail. This chapter does not require any purchaser or mortgagee to rely on a description, any part of which depends exclusively~~

upon the North Dakota coordinate system, unless the description has been adjudicated as provided in this section.

SECTION 5. AMENDMENT. Section 47-20.2-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-20.2-05. ~~"North~~ North Dakota coordinate system ~~system~~ origins defined.

1. For the purposes of more precisely defining the ~~"North~~ North Dakota coordinate system ~~system~~ of 1927, the following definition definitions by the United States coast and geodetic survey ~~is~~ are adopted:

- a. The North Dakota coordinate system of 1927, north zone, is a Lambert conformal conic projection of the Clarke spheroid of 1866, having standard parallels at north latitudes, forty-seven degrees twenty-six minutes and ~~at~~ forty-eight degrees forty-four minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian one hundred degrees thirty minutes west of Greenwich and the parallel forty-seven degrees zero minutes north latitude. This origin is given the coordinates:

$x = 2,000,000$ feet [609.6 kilometers], and $y = 0$ feet [0 kilometers].

- b. The North Dakota coordinate system of 1927, south zone, is a Lambert conformal conic projection of the Clarke spheroid of 1866, having standard parallels at north latitudes forty-six degrees eleven minutes and ~~at~~ forty-seven degrees twenty-nine minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian one hundred degrees thirty minutes west of Greenwich and the parallel forty-five degrees forty minutes north latitude. This origin is given the coordinates:

$x = 2,000,000$ feet [609.6 kilometers], and $y = 0$ feet [0 kilometers].

2. The position of the North Dakota coordinate system shall be as marked on the ground by triangulation or traverse stations established in conformity with standards adopted by the United States coast and geodetic survey for first-order and second-order work; whose geodetic positions have been rigidly adjusted on the North American datum of 1927; and whose coordinates have been computed on the system herein defined. Any such station may be used for establishing a survey connection with the North Dakota coordinate system. For the purposes of more precisely defining the North Dakota coordinate system of 1983, the following definition by the national ocean survey/national geodetic survey is adopted:

- a. The North Dakota coordinate system of 1983, north zone, is a Lambert conformal conic projection of the North American datum of 1983, having standard parallels at north latitude of forty-seven degrees twenty-six minutes and forty-eight degrees forty-four minutes along which parallels the scale shall be

exact. The origin of coordinates is at the intersection of the meridian one hundred degrees thirty minutes west of Greenwich and the parallel forty-seven degrees zero minutes north latitude. This origin is given the coordinates:

$x = 600,000.0000$ meters, and $y = 00.0000$ meters.

- b. The North Dakota coordinate system of 1983, south zone, is a Lambert conformal conic projection of the North American datum of 1983, having standard parallels at north latitude of forty-six degrees eleven minutes and forty-seven degrees twenty-nine minutes along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian one hundred degrees thirty minutes west of Greenwich and the parallel forty-five degrees forty minutes north latitude. This origin is given the coordinates:

$x = 600,000.0000$ meters, and $y = 00.0000$ meters.

SECTION 6. AMENDMENT. Section 47-20.2-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-20.2-06. Coordinates to be established in conformity with standards. North Dakota coordinate system - Use of term. The use of the North Dakota coordinate system of 1927 north zone or south zone or the North Dakota coordinate system of 1983 north zone or south zone on any map, report of survey, or other document must be limited to coordinates based on the North Dakota coordinate systems as defined in this chapter. The map, report, or document must include a statement describing the standard of accuracy, as defined by the national ocean survey/national geodetic survey, maintained in developing the coordinates shown therein. The coordinates must be established in conformity with these standards:

1. No coordinates based on the North Dakota coordinate system, purporting to define the position of a point on a land boundary, shall may be presented to be recorded in any public records or deed records unless such the point is connected to a triangulation or traverse station established in conformity with the standards prescribed in section 47-20.2-05 this chapter. The connecting traverse or triangulation shall conform to the standards set forth in section 47-20.2-05, and a copy of the calculations of the connection shall be included in the description.
2. Stations Coordinate values used in land descriptions under this section may be set by any duly authorized public agency, registered professional engineer, or must be certified by a duly registered land surveyor, if said stations conform to the standards of section 47-20.2-05, and if the descriptions and calculations thereof are of public record under the laws of this state.

SECTION 7. REPEAL. Sections 47-20.2-07, 47-20.2-08, and 47-20.2-09 of the North Dakota Century Code are hereby repealed.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 556

SENATE BILL NO. 2221
(Committee on Finance and Taxation)
(At the request of the Tax Department)

ADMINISTRATION OF VARIOUS TAX LAWS

AN ACT to create and enact a new section to chapter 47-21 and a new subsection to section 57-40.3-11 of the North Dakota Century Code, relating to penalty and interest on tax levied on selling and licensing performing rights and fixing motor vehicle excise tax audit assessments; and to amend and reenact section 57-37.1-01 of the North Dakota Century Code, relating to the federalization of the estate tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 47-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Administration. The provisions of chapter 57-39.2, pertaining to the administration of the retail sales tax, including provisions for penalty and interest, not in conflict with the provisions of this chapter, shall govern the administration of the tax levied by this chapter.

SECTION 2. AMENDMENT. Section 57-37.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-37.1-01. Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, except when the context clearly indicates a different meaning:

1. "Federal gross estate" means the gross estate of a decedent as determined for federal estate tax purposes pursuant to the provisions of the United States Internal Revenue Code of ~~1954~~ 1986, as amended through December 31, 1988.
2. "Federal taxable estate" means the taxable estate of a decedent as determined for federal estate tax purposes pursuant to the provisions of the United States Internal Revenue Code of ~~1954~~ 1986, as amended through December 31, 1988.
3. "Nonresident decedent" means an individual who at the time of his or her death was not a resident decedent.
4. "Personal representative" or "personal representative of an estate" means the executor or administrator of the decedent, or, if there is no executor or administrator appointed, qualified, and acting within this state, then any person in actual or constructive possession of any property having a situs in this state which is included in the federal gross estate of the decedent.

5. "Resident decedent" means an individual whose residence at the time of his or her death was in North Dakota according to the rules for determining residence as provided in section 54-01-26.
6. "Situs of property" means, as to real property, the state or country in which it was situated at the time of the decedent's death; as to tangible personal property, the state or country in which it was normally kept or located at the time of the decedent's death; as to intangible personal property, the state or country in which the decedent was a resident at death; and when used in reference to property having a situs in North Dakota it also means the county in which the property has its situs as determined in accordance with this subsection. Provided, however, that as to intangible personal property a resident may specify in his or her will that the situs of all, or of particular items of, intangible personal property shall be at any ~~such~~ location within a county or counties in this state at which he or she had resided for at least fifteen years after attaining eighteen years of age.
7. "Tax commissioner" means the tax commissioner of the state of North Dakota.
8. ~~"United States Internal Revenue Code of 1954, as amended" means the United States Internal Revenue Code of 1954 as amended through December 31, 1986, and also includes references to the Internal Revenue Code of 1986-~~

SECTION 3. AMENDMENT. A new subsection to section 57-40.3-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

If upon audit the commissioner determines that a motor vehicle excise tax has not been paid or an additional tax is due, the commissioner shall give notice of determination of the tax due to the person liable for the tax. The notice of determination of tax due fixes the tax finally and irrevocably unless within fifteen days of the date of the notice the person against whom the tax is assessed applies to the commissioner for a hearing under chapter 28-32 or unless the commissioner reduces the liability relating to assessments on the commissioner's own motion. The provisions of chapter 57-39.2 not in conflict with the provisions of this chapter govern the administration of the tax levied in this chapter.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 557

SENATE BILL NO. 2214
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

TRADE NAMES

AN ACT to create and enact two new sections to chapter 47-25 of the North Dakota Century Code, relating to assignment or cancellation of trade names; and to amend and reenact sections 47-25-02, 47-25-03, 47-25-04, and 47-25-05 of the North Dakota Century Code, relating to trade names.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-25-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-25-02. Trade name - Registration - Statement - Contents —~~Change of registration.~~ Any person who engages in business in this state under a trade name may register with the secretary of state for purposes of registering a trade name, a statement executed by each owner upon blanks furnished by the secretary of state, setting forth: (1) the trade name to be registered, (2) the name or names and addresses of each and every owner of the business, and (3) the nature of the business in detail. ~~If, however, the interest of any person or persons engaged in business under a trade name shall change or cease to exist, or any other person shall become interested therein, such change shall be registered within ninety days after any change shall take place in the ownership of the business or any part thereof in the same manner as an original registration.~~

SECTION 2. AMENDMENT. Section 47-25-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-25-03. Trade name - Nature. No trade name registered shall be the same as, or deceptively similar to, the name of any other trade name, domestic or foreign corporation name, or limited partnership authorized to do business in this state, or a name the right to which is in any manner reserved or registered in the office of the secretary of state.

SECTION 3. AMENDMENT. Section 47-25-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-25-04. Trade names - Registration - ~~Fee Fees~~ - Renewal - Notice. For the registration of each trade name as provided for in this chapter, there shall be paid to the secretary of state a fee of twenty-five dollars for an original registration, a fee of twenty-five dollars for an assignment, and a fee of ten dollars for a ~~any other change in the original registration~~ as provided in this chapter. Any registration shall remain in force for a period of five years from the date of the original registration, and may be renewed by reregistering in the same manner as an original registration, if renewed within thirty days before the expiration date. The secretary of

state shall notify the registrant by mail at least ninety days before the expiration of such registrations.

SECTION 4. AMENDMENT. Section 47-25-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-25-05. Certificate of registration — ~~Publication~~. Every certificate of the registration of a trade name, within thirty days from the time of the registration of such trade name, ~~shall~~ must be indexed in the office of the secretary of state and a copy of the certificate ~~shall~~ must be given to the registrant.

SECTION 5. A new section to chapter 47-25 of the North Dakota Century Code is hereby created and enacted to read as follows:

Assignment. If the interest of any person engaged in business under a trade name changes or ceases to exist, or any other person becomes interested therein, the assignment of ownership must be registered within ninety days after any change takes place. Any trade name and its registration is assignable with the good will of the business in which the trade name is used. Assignment must be made by the assignor on forms provided by the secretary of state setting forth the trade name, the names and addresses of each assignee, and the nature of the business. The assignment must be filed by the secretary of state who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal.

SECTION 6. A new section to chapter 47-25 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cancellation. The secretary of state shall cancel from the register:

1. Any registration concerning which the secretary of state receives a voluntary written and signed request for cancellation from the registrant or the assignee of record.
2. Any registration concerning which a state district court finds any of the following:
 - a. That the registered trade name has been abandoned.
 - b. That the registrant is not the owner of the trade name.
 - c. That the registration was granted improperly.
 - d. That the registration was obtained fraudulently.
 - e. That the trade name registered is so similar to a trade name registered by another person as to be likely to cause confusion or mistake or to deceive.
3. Any registration a district court orders canceled on any grounds.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 558

HOUSE BILL NO. 1100
(Committee on Judiciary)

(At the request of the Commission on Uniform State Laws)

UNIFORM TRADE SECRETS ACT CHANGES

AN ACT to amend and reenact sections 47-25.1-02, 47-25.1-03, and 47-25.1-07 of the North Dakota Century Code, relating to the Uniform Trade Secrets Act, and to amend and reenact section 9 of chapter 508 of the 1983 Session Laws of North Dakota, relating to the time of taking effect of the Uniform Trade Secrets Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-25.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-25.1-02. Injunctive relief.

1. Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time to eliminate commercial advantage that otherwise would be derived from the misappropriation.
2. If the court determines that it would be unreasonable to prohibit future use In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time ~~the~~ for which use could have been prohibited. Exceptional circumstances include a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.
3. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

SECTION 2. AMENDMENT. Section 47-25.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-25.1-03. Damages.

1. In addition to or in lieu of injunctive relief Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant ~~may~~ is entitled to recover damages for ~~the actual loss caused by~~ misappropriation.

A complainant also may recover for Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss. In lieu of damages measured by any other method, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

2. If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection 1.

SECTION 3. AMENDMENT. Section 47-25.1-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-25.1-07. Effect on other law.

1. This Except as provided in subsection 2, this chapter displaces conflicting tort, restitutionary, and other law of this state pertaining to providing civil liability remedies for misappropriation of a trade secret.
2. This chapter does not affect:
 - a. Contractual or other civil liability or relief that is remedies, whether or not based upon misappropriation of a trade secret; or
 - b. Criminal liability for Other civil remedies that are not based upon misappropriation of a trade secret; or
 - c. Criminal remedies, whether or not based upon misappropriation of a trade secret.

SECTION 4. AMENDMENT. Section 9 of chapter 508 of the 1983 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

SECTION 9. Time of taking effect. This Act takes effect on July 1, 1983, and does not apply to misappropriation occurring prior to the effective date. With respect to a continuing misappropriation that began prior to the effective date, the Uniform Trade Secrets Act also does not apply to the continuing misappropriation that occurs after the effective date.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 559

SENATE BILL NO. 2457
(Hanson)

TOWNSHIP OFFICIALS

AN ACT to amend and reenact section 47-26-04, subsections 7 and 18 of section 58-03-07, sections 58-04-05, 58-09-02, 58-13-04, and 58-13-05 of the North Dakota Century Code, relating to fence viewer fees, penalties for violations of township rules, township association membership fees, salary of township officials, mileage expenses of township assessors, and impounding animals; and to repeal subsection 19 of section 58-06-01 and section 58-13-02 of the North Dakota Century Code, relating to township budgets for 1988 and 1989 and fees of poundmasters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-26-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

47-26-04. Fees of fence viewers. Each township supervisor or county commissioner ~~shall~~ may be paid by the person employing him, at the rate of ~~one dollar~~ no more than fifteen dollars per day for the time he is employed as a fence viewer. If such person neglects to pay such fees within thirty days after the service is performed, the township supervisor or county commissioner may recover the amount thereof in a civil action.

SECTION 2. AMENDMENT. Subsections 7 and 18 of section 58-03-07 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

7. To impose penalties ~~not exceeding ten dollars~~ for each offense on persons offending against any rule or regulation established by the township.
18. To authorize the expenditure of funds to pay membership fees in county, state, and national associations of township governments. ~~The expenditures shall not exceed the equivalent of the proceeds of one-tenth of one mill of the taxable valuation of the township, and may be any lesser amount.~~ This subsection shall not be construed to authorize a mill levy.

SECTION 3. AMENDMENT. Section 58-04-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-04-05. Organization of annual or special meetings. The qualified electors present on the day of the annual or special meeting shall be called to order by the township clerk, or, if he is not present, the qualified electors may elect by acclamation one of their number to act as chairman for the purpose of calling the meeting to order and to act as clerk after the selection of a moderator. The qualified electors shall elect by acclamation

three of their number as judges, and such judges shall be sworn and shall act as the judges of the qualifications of the qualified electors of the township. The qualified electors shall proceed to choose one of their number to preside as moderator of the meeting. The clerk of the township, if present, or in his absence, the clerk of the meeting, shall keep full minutes of its proceedings in which he shall enter at length every order, direction, rule, and regulation made by the meeting. Meeting and voting hours of an annual or special meeting shall be optional with the township board, provided proper notice is given under the provisions of this chapter. The positions of moderator, clerk, and the three judges shall be separate and distinct positions and no such positions shall be held by the same person. The moderator, clerk, and the three judges each ~~shall~~ may be entitled to a salary of ~~eight~~ no more than fifteen dollars per day for each day actually expended in the performance of their duties. Such salary shall be paid out of township funds made available for such purpose. However, in those townships in which the offices of township clerk and treasurer have been merged, the person holding such office shall receive compensation as provided by law as township treasurer only, and shall not receive additional compensation for his duties as clerk.

SECTION 4. AMENDMENT. Section 58-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-09-02. Compensation of assessor. The township assessor shall receive as compensation for his services a sum determined by the board of township supervisors for the time actually and necessarily employed in making and completing the assessment of the township and ~~fifteen~~ twenty cents per mile [1.61 kilometers] for each mile [1.61 kilometers] necessarily traveled in the performance of his duties. The compensation shall be paid out of the township treasury upon an itemized statement setting forth the actual time spent in the work of assessor, approved by the board of township supervisors.

SECTION 5. AMENDMENT. Section 58-13-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-13-04. Notice of impounding - Foreclosure of lien. If the legal charges and expenses of the poundmaster are not paid and the animals removed within ten days after they are impounded, the poundmaster shall give notice by posting in the three most public places in the township notices that the animals, describing them, are impounded and that unless they are taken away and the fees paid within thirty days after the date of the notice, the poundmaster will sell them at public vendue at the place where the township meetings usually are held. On the day designated in the notice, the poundmaster shall expose the animals for sale and sell them to the highest bidder ~~for cash, and he shall receive two percent of the purchase money received for each animal for his services in selling the same.~~

SECTION 6. AMENDMENT. Section 58-13-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-13-05. Poundmaster may destroy worthless animals. If any animal taken up by the poundmaster is worthless and cannot be sold, the poundmaster shall destroy it, and the board of township supervisors shall pay the poundmaster out of the general fund of the township ~~the statutory fee for the care of such animal.~~

SECTION 7. REPEAL. Section 58-13-02 of the North Dakota Century Code and subsection 19 of section 58-06-01 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 560

HOUSE BILL NO. 1471
(Representative Enget)
(Senator J. Meyer)

CERTIFICATE OF DEPOSIT ABANDONMENT

AN ACT to amend and reenact subsection 1 of section 47-30.1-06 of the North Dakota Century Code, relating to abandonment of certificates of deposit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 47-30.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless, in the case of a matured time deposit, the banking or financial organization has mailed, at least once every seven years certified mail, requesting a return receipt, to the owner and the receipt has been returned and signed by the addressee, or unless the owner, within seven years has:
 - a. In the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;
 - b. Communicated in writing with the banking or financial organization concerning the property;
 - c. Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;
 - d. Owned other property to which subdivision a, b, or c applies and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at the address to which communications regarding the other property regularly are sent; or
 - e. Had another relationship with the banking or financial organization concerning which the owner has:
 - (1) Communicated in writing with the banking or financial organization; or

- (2) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 561

SENATE BILL NO. 2202
(Committee on State and Federal Government)
(At the request of the Board of University and School Lands)

ABANDONED PROPERTY INFORMATION

AN ACT to create and enact a new section to chapter 47-30.1 of the North Dakota Century Code, relating to the public dissemination and confidentiality of information held by the state abandoned property office; and to amend and reenact subsections 1 and 2 of section 47-30.1-18 and subsection 1 of section 47-30.1-23 of the North Dakota Century Code, relating to the time for publication of notice of abandoned property reported by life insurance companies, the contents of the publication of notice of abandoned property, and the public dissemination of information held by the state abandoned property office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 47-30.1-18 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The administrator shall cause a notice to be published not later than March first, ~~or in the case of property reported by life insurance companies, September first,~~ of the year immediately following the report required by section 47-30.1-17 at least once a week for two consecutive weeks in a newspaper of general circulation in the county of this state in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice must be published in the county in which the holder of the property has its principal place of business within this state.
2. The published notice must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and contain:
 - a. The names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice within the county as specified in subsection 1.
 - b. A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the administrator.
 - c. ~~A statement that, if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before April twentieth, or, in the case of property reported by life~~

insurance companies; before October twentieth, the property will be placed not later than May first, or in the case of property reported by life insurance companies, not later than November first, in the custody of the administrator and all further claims must thereafter be directed to the administrator.

SECTION 2. AMENDMENT. Subsection 1 of section 47-30.1-23 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as otherwise provided by this section, the administrator shall promptly deposit in the state treasury to the credit of the common schools trust fund all funds received under this chapter, including the proceeds from the sale of abandoned property under section 47-30.1-22. The administrator shall retain in a separate trust fund an amount not less than one hundred thousand dollars from which prompt payment of claims duly allowed must be made. Before making the deposit, the administrator shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or contract listed in the report of an insurance company its number, the name of the company, and the amount due. The record must be available for public inspection at all reasonable business hours.

SECTION 3. A new section to chapter 47-30.1 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Abandoned property lists - Preparation - Contents - Confidentiality.
The administrator shall prepare two lists with information about property paid or delivered to the administrator under section 47-30.1-19.

1. One list must refer to all property in the administrator's custody and must contain the name and last known address of each person appearing from the holders' report to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary from the report of an insurance company.
2. The second list must refer to property that has been in the administrator's custody for more than twenty-four months and must contain the following information:
 - a. The name and last known address of each person appearing from the holders' report to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary from the report of an insurance company.
 - b. The amount paid or delivered to the administrator.
 - c. The name of the person who paid or delivered the property to the administrator.
 - d. A general description of the property.

- e. Other information the administrator deems appropriate for inclusion in the list.
- 3. The lists described in this section must be updated semiannually.
- 4. The lists described in this section must be available for public inspection at all reasonable business hours and copies of each list must be available to the public for a fee to be set by the administrator.
- 5. Reports filed with the administrator under section 47-30.1-17 are not public records and are not open to public inspection until twenty-four months after the date payment or delivery is made under section 47-30.1-19.

Approved March 9, 1989
Filed March 9, 1989

PUBLIC BUILDINGS

CHAPTER 562

SENATE BILL NO. 2418
(Senators Wogsland, Schoenwald, Keller)
(Representative Kingsbury)

BUILDING AND REPAIR BIDS

AN ACT to create and enact a new section to chapter 48-02 of the North Dakota Century Code, relating to bid requirements and acceptance for building and repair contracts; and to amend and reenact sections 48-02-04 and 48-02-06 of the North Dakota Century Code, relating to the contents of bid advertisements and awarding contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 48-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Bid requirements and acceptance. Competitive bids for the work for which plans, drawings, and specifications are required by section 48-02-02 may be submitted as bids for the single project; individual bids for general, electrical, and mechanical contracts; or bids for other portions of the project. The governing board may not accept the single project bid unless that bid is lower than the combined total of the lowest bids for general, electrical, and mechanical contracts.

* SECTION 2. AMENDMENT. Section 48-02-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-02-04. Contents of advertisement. The advertisement for bids required by section 48-02-03 ~~shall~~ must state:

1. When and where the plans, drawings, and specifications therefor may be seen and examined;
2. The place where, and the day and hour when, the bids will be opened;
3. That the right of the board to reject any and all bids is reserved;
4. That the bids may be submitted as bids for the single project; individual bids for general, electrical, and mechanical contracts; or bids for other portions of the project.
5. Each That each bid shall must be accompanied by a separate envelope containing a bidder's bond in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal and by a surety company authorized to do business in this state, conditioned that if the principal's bid be accepted and the contract awarded to ~~him~~ he the principal, the principal, within ten days after notice of award, will execute and effect a contract

* NOTE: Section 48-02-04 was also amended by section 2 of Senate Bill No. 2087, chapter 508.

in accordance with the terms of ~~his~~ the principal's bid and a contractor's bond as required by law and the regulations and determinations of the governing board;

- 5- 6. ~~All~~ That all bidders must be licensed for the highest amount of their bids, as provided by section 43-07-05; and
- 6- 7. ~~No~~ That no bid will be read or considered which does not fully comply with the above provisions as to bond and licenses, and any deficient bid submitted will be resealed and returned to the bidder immediately.

SECTION 3. AMENDMENT. Section 48-02-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-02-06. Opening bids - Award of contract - Bond required. At the time and place specified in the notice, the governing board shall open publicly and read aloud all bids received, and may reject all bids or award the contract, subject to section 1 of this Act, to the lowest and best bidder. The governing body concerned shall require of the contractor to whom the contract is awarded a bond complying with chapter 48-01. ~~Such~~ The board ~~shall have the power to may~~ reject any and all bids and may advertise anew in accordance ~~herewith~~ with this chapter until a satisfactory bid is received.

Approved April 12, 1989

Filed April 13, 1989

CHAPTER 563

HOUSE BILL NO. 1228
(Ulmer)

HIGHER EDUCATION HANDICAPPED ACCESS

AN ACT to amend and reenact section 48-02-19 of the North Dakota Century Code, relating to access by the handicapped to institutions of higher education; to provide an appropriation; and to provide legislative intent regarding the funding of handicapped access projects in future bienniums.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-02-19 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-02-19. Public buildings and facilities to be usable by physically handicapped - Access requirements. All public buildings and facilities constructed, in whole or in part, from funds of the state or of its political subdivisions ~~shall~~ must be accessible to, and usable by, the physically handicapped in accordance with the provisions of this section by July 1, 1981, with the following exceptions: (1) institutions under the supervision and control of the board of higher education; ~~provided, however, that at least two institutions of higher education shall must be so constructed or remodeled so as to make all programs offered therein accessible as required in this section by July 1, 1996;~~ and (2) areas, offices, or levels of public buildings not used for activities open to members of the general public. In meeting the requirements of this section full consideration shall be given to the rules and regulations recommended in and provided by the American standard specifications (A117.1-1961) approved October 31, 1961, by the American standards association, and future amendments thereto. Governing bodies of political subdivisions shall require a statement from the person or persons preparing the plans and specifications for the building or facility that the plans and specifications are in conformance with the provisions of this section. Adequate space for the physically handicapped to park automobiles near the facility without the necessity of crossing a street to reach the facility shall be provided. All parking spaces reserved for use by motor vehicles operated by or for physically handicapped persons shall be designated by blue paint on the curb or edge of the paved portion of the parking space. All city curbs and crosswalks at principal intersections in the vicinity of public buildings shall be made usable to persons in wheelchairs.

* SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,600,000, or so much thereof as may be necessary, to the North Dakota state board of higher education for completion of selected handicapped access projects at the institutions of higher education for the biennium beginning July 1, 1989, and ending June 30, 1991.

* NOTE: Section 2 was vetoed by the Governor, see chapter 777.

SECTION 3. LEGISLATIVE INTENT - FUTURE FUNDING OF HANDICAPPED ACCESS PROJECTS. It is the intent of the legislative assembly that the funding provided in section 2 of this Act be the first phase of a total of \$4,692,550 to be provided for handicapped access projects at the institutions of higher education and that only projects which can be completed within the appropriated amount be undertaken during the biennium. In addition, it is the intent of the legislative assembly that the institutions of higher education and the executive budget office request funds in subsequent biennial budgets sufficient to complete the remaining handicapped access projects by July 1, 1996.

Approved April 11, 1989
Filed April 17, 1989

CHAPTER 564

SENATE BILL NO. 2065
(Legislative Council)
(Interim Legislative Procedure and Arrangements Committee)

LEGISLATIVE ROOMS AND HALLS USE

AN ACT to amend and reenact section 48-08-04 of the North Dakota Century Code, relating to space used by the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-08-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-08-04. Limitation on lease to federal and other agencies use of legislative assembly rooms and halls. The During the interim between legislative sessions, the committee rooms, halls, passageways, and other space in the capitol used by the legislative assembly shall may not be used or leased to any federal agency or other department of the state government except in case of extreme emergency without authorization of the legislative council, or its designee.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 565

SENATE BILL NO. 2104
(Committee on State and Federal Government)
(At the request of the Director of Institutions)

PUBLIC PROPERTY CONCESSIONS BIDS

AN ACT to amend and reenact section 48-09-02 of the North Dakota Century Code, relating to the advertising of concessions on public grounds and buildings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

48-09-02. Concession advertised in legal newspaper. When the concession granted pursuant to section 48-09-01 is deemed worth more than ~~one~~ five hundred dollars, the same shall be let to the highest bidder or best bidder, or both after the advertisement for bids therefor once in each week for three consecutive weeks in a legal newspaper published in the city at or near which such concession is located.

Approved March 9, 1989
Filed March 9, 1989

PUBLIC UTILITIES

CHAPTER 566

SENATE BILL NO. 2320
(Senators Nething, Langley)
(Representatives Ulmer, R. Larson)

TELECOMMUNICATION RATES

AN ACT to create and enact subsection 6 of section 49-21-01.1 and four new sections to chapter 49-21, relating to the establishment of a regulatory reform review commission and exemption from certain regulations for telecommunication companies; and to amend and reenact subsection 2 of section 49-02-01, sections 49-21-01, 49-21-02.1, 49-21-02.2, 49-21-04, 49-21-04.1, 49-21-05, 49-21-06, 49-21-07, and 49-21-09, relating to regulation of telecommunication companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 49-02-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Telecommunications companies engaged in the furnishing of telecommunications services as provided for in chapter 49-21.

SECTION 2. AMENDMENT. Section 49-21-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-01. Definitions. As used in this chapter, unless the context otherwise clearly requires:

1. "Access" means telecommunications services to connect a telecommunications customer or end user with a telecommunications company that allows for the origination or the termination, or both, of message toll type and private line telecommunications services. "Switched access" includes:
 - a. Local exchange central office switching and signaling;
 - b. Operator and recording intercept of calls;
 - c. Termination of end user lines in the local exchange central office; and
 - d. The carrier common line charge for the line between the end user's premises and the local exchange central office.
2. "Essential telecommunications price factor" means the annual change in a company's input cost index reduced by fifty percent of that company's productivity incentive adjustment.

3. "Essential telecommunications service" means service that is necessary for access to interexchange telecommunications companies and two-way switched communications for both residential and business service within a local exchange area. A charge based on usage may not be required for residential and business local exchange service. Essential telecommunications services include:
 - a. Access;
 - b. Any new product or service, not existing on July 1, 1989, but deemed essential by the commission after notice and hearing in accordance with chapter 28-32;
 - c. Billing and collection of the billing company's own essential telecommunications services;
 - d. Directory listing and local exchange directory assistance;
 - e. Emergency 911 services and operator assistance in local exchange areas in which emergency 911 service is not available;
 - f. Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas;
 - g. Service connection to the local exchange network;
 - h. Telecommunications service provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's telecommunications services; and
 - i. Transmission service between the end user's premises and the local exchange central office switch including signaling service such as touchtone used by end users for essential telecommunications services.
4. "Input cost index" means a comparison of the cost of all goods and services purchased by a telecommunications company to the cost of the same goods and services in a base year.
5. "Interexchange telecommunications company" means a person providing telecommunications service to end users located in separate local exchange areas.
6. "Local exchange area" means a geographic territorial unit established by a telecommunications company for the administration of telecommunications services as approved and regulated in accordance with chapter 49-03.1.
7. "Mutual telephone company" means a telephone cooperative organized and operating subject to the provisions of this chapter, and such a cooperative shall also be subject to the general law governing cooperatives, except where such general law is in conflict with this chapter.

- 2- 8. "Price" means any charge set and published in accordance with chapter 49-21 and collected by a telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies.
9. "Productivity incentive adjustment" means a telecommunications company's expected average annual change in productivity. "Productivity" means a measure of a telecommunications company's total output of services and products to the total amount of input of resources used to produce those services and products.
10. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
- 3- 11. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.

SECTION 3. Subsection 6 of section 49-21-01.1 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

6. Billing and collection services.

SECTION 4. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exemption - Rate regulation. Except as provided for in this chapter and sections 49-02-01.1, 49-02-02, 49-02-04, 49-02-05, 49-02-05.1, 49-02-21, 49-02-22, and 49-04-02.1, telecommunications companies and all telecommunications services are exempt from the provisions of chapter 49-02 and from the provisions of section 49-02-02 and chapters 49-04, 49-05, and 49-06 which concern rates. Telecommunications companies and services are not subject to rate or rate of return regulation. Any telecommunications company may inform the commission, in writing, that it does not want to be subject to the provisions of this section and section 5 of this Act, and that it wants to be subject to rate and rate of return regulation. For telecommunications companies with over fifty thousand end users, the election not to be exempt from rate and rate of return regulation is a one-time, irrevocable decision.

SECTION 5. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Certain price increases prohibited - Essential telecommunications services. Changes in essential telecommunications services prices are prohibited except as specifically provided for in chapter 49-21 and section 49-02-01.1.

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost caused by governmentally imposed changes in taxes, accounting practices, or separations procedures for essential services must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change.

2. The price of essential services may be changed according to the essential telecommunications price factor. Increases may be reflected in prices after notice to the company's customers one billing period in advance. A decrease must be reflected in prices within thirty days of the effective date of the price factor. The commission shall set a company's price factor to be effective January 1, 1990, and annually thereafter. No price for a service may be changed more than once a year. Prices may be changed by service element, but the aggregate annual price change for a service may not exceed the essential telecommunications price factor. Complaints may be made pursuant to section 49-21-06 for any prices changed under this subsection.
3. Nothing in this section prohibits the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.

SECTION 6. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Purchase of essential telecommunications services. Customers of any telecommunications company must be permitted to purchase essential telecommunications services separate from all other telecommunications services.

SECTION 7. A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Regulatory reform review commission - Appointments - Report to legislative council. The regulatory reform review commission shall review the operation and effect of this Act on an ongoing basis during the interims between the 1989, 1991, 1993, and 1995 legislative sessions and shall submit a report regarding its operation and effect to the legislative council in 1990, 1992, and 1994. The regulatory reform review commission consists of the members of the public service commission, two members of the senate, appointed by the president of the senate, and two members of the house of representatives, appointed by the speaker. The public service commission shall provide technical assistance to the regulatory reform commission and the legislative council shall provide staff services. The expenses of the regulatory reform review commission while carrying out its duties under this Act including expenses incurred for holding meetings and preparing reports shall, upon the order of the public service commission, be paid by the telecommunications companies affected by this Act in the manner provided in section 49-02-02.

SECTION 8. AMENDMENT. Section 49-21-02.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-02.1. Authority to exempt from regulation.

1. The commission ~~may~~ must exempt a telecommunications service, a telecommunications company, or a transaction by a telecommunications company from one or more of the provisions of this title when the commission determines that the application of

such provisions are not necessary to carry out the telecommunications policy of section 49-21-02; and either of the following apply:

- a. The transaction or service is of limited scope.
 - b. The application of a provision of this title is not needed to protect subscribers because the service, company, or transaction is subject to effective competition a sufficiently competitive market.
2. In determining if a telecommunications service, company, or transaction is subject to effective competition a sufficiently competitive market, the commission ~~shall~~ may consider all of the following:
- a. The extent to which competing telecommunications services are available from providers in the relevant geographic area or market.
 - b. The ability of such providers to make competing telecommunications services which are functionally equivalent or substitutable and readily reasonably available at comparable rates prices, terms, quality, and conditions.
 - c. Other indicators of the extent of competition The behavior of the market, including the market share, growth in the market share, and the affiliation of providers of competing telecommunications services as the commission deems appropriate the impact of potential competition, and other factors which cause a company to behave competitively.
3. The commission may begin a proceeding under this section on its own initiative or on application by an interested party. ~~The commission may specify the period of time during which an exemption granted under this section is effective-~~ The commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this title to the service, company, or transaction is necessary to carry out the telecommunications policy set forth in section 49-21-02.
4. ~~When the commission exempts a telecommunications service from all of the provisions of this title, the investment, revenues, and expenses associated with the service shall not be considered by the commission in setting rates for the telecommunications company's regulated services unless they continue to affect the company's regulated operations. Nothing in this section precludes the commission from considering the investment, revenues, and expenses associated with the sale of classified directory advertising or directory listings by a telecommunications company in determining rates for the regulated services of the telecommunications company.~~
- 5- The commission may not be unjustly discriminatory or preferential in the regulatory treatment of any telecommunications company.

SECTION 9. AMENDMENT. Section 49-21-02.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-02.2. Separation between regulated and unregulated services Cross-subsidization prohibited. Revenues obtained from regulated services, including essential and nonessential services, may not be used to subsidize or otherwise give advantage to a telecommunications company in its unregulated enterprises; if a telecommunications company offers both regulated services and services that are unregulated as determined under section 49-21-02.1, the commission may require the telecommunications company to keep separate books of account, to allocate costs in accordance with procedures established by rule or order of the commission and to perform such other acts as will assist the commission in enforcing this section. Services, and revenues from essential services may not be used to subsidize or otherwise give advantage to a telecommunications company in its nonessential services. The commission may require a telecommunications company to keep separate books of account, to allocate costs in accordance with procedures established by rule or order of the commission, and to perform other acts that will assist the commission in enforcing this section. The price charged for an unregulated service or a nonessential service must cover the cost of providing that service.

SECTION 10. AMENDMENT. Section 49-21-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-04. Tariffs Price schedules filed with the commission. Each telecommunications company, including companies excluded from the commission's rate jurisdiction pursuant to section 49-02-01.1, shall file with the commission in such form and detail as it may require, subject to considerations for maintaining trade secrets or commercial confidentiality:

1. Schedules showing all rates and charges which are established and prices, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any telecommunications service rendered to the public by such telecommunications company within this state; and
2. All rules and regulations which in any manner affect the rates prices charged or to be charged for such service.

SECTION 11. AMENDMENT. Section 49-21-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-04.1. Maximum and minimum rates - Changes. Notwithstanding the provisions of section 49-05-05 to the contrary, for a telecommunications company that elects to remain subject to the commission's rate and rate of return regulation, the commission may approve schedules of rates for a service that establishes only maximum rates, only minimum rates, or both minimum and maximum rates. A telecommunications company having such an approved schedule may, with respect to the services covered by the schedule, change its rates after such notice to the public and commission as the commission prescribes.

SECTION 12. AMENDMENT. Section 49-21-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-05. Schedule of rates prices to be on file for public inspection. The commission may require any telecommunications company to keep on file and accessible to the public, subject to considerations for maintaining trade secrets or commercial confidentiality, at any city in which the telecommunications company has an a public office, a schedule of such rates and charges prices for essential telecommunications services as the commission may deem necessary.

SECTION 13. AMENDMENT. Section 49-21-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-06. Complaint against rates or service prices. There is a rebuttable presumption that prices for essential telecommunications services in effect on July 1, 1989, are fair and reasonable. Any telecommunications company, municipality, or not less than ten percent of the patrons of a telecommunications company within any municipality or territory contiguous thereto, person may make complaint to the commission, or the commission on its own motion may begin investigation, of the unreasonableness or inadequacy of any rate or charge price for any service. Any hearing by the commission will be conducted in accordance with section 49-05-03 and the commission can set aside any price for a service it investigates pursuant to this section which it determines, after notice and hearing, to be unreasonable or inadequate. This section must be construed to authorize the commission to set aside any unreasonable or inadequate price set by a telecommunications company for the connection between facilities of two or more telecommunications companies and for the transfer of telecommunications, provided this section may not be construed to set aside any price set by contract between telecommunications companies and in effect on July 1, 1989, upon complaint by one of the parties to the contract that the price is unreasonably high. Other complaints are subject to the commission's authority pursuant to section 49-05-01.

SECTION 14. AMENDMENT. Section 49-21-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-07. Discrimination unlawful. It shall be unlawful for any telecommunications company to make any unjust or unreasonable discrimination in prices, practices, or service for or in connection with like telecommunications service, or give any undue or unreasonable preference or advantage to any person or telecommunications company or to subject any person or telecommunications company to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public or to a telecommunications company, or to charge or receive for any such service rendered, more or less than the rates prices provided for in the schedules then on file with the commission. So long as the price for access service is subject to the provisions of subsection 2 of section 5 of this Act, a telecommunications company providing intrastate interexchange message toll services shall charge uniform prices on all routes where it offers such services. A telecommunications company providing local exchange service and message toll type and private line services shall cover in its price for message toll type and private line services, the price of providing access service in its own exchanges. Nothing in this chapter shall be construed to prevent any telecommunications company from offering or providing volume or other discounts based on reasonable business practices; from passing through any state, municipal or local taxes to the specific geographic areas from which the taxes originate; or from furnishing free telecommunications service

or service at reduced ~~rates~~ prices to its officers, agents, servants, or employees.

SECTION 15. AMENDMENT. Section 49-21-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-21-09. Telecommunications - Connections —~~Rates~~. Whenever the commission shall find that a connection can be made reasonably between the facilities of two or more telecommunications companies for the transfer of telecommunications and that public convenience and necessity will be subserved thereby, the commission may require that such connection be made. ~~The commission may establish rates for the transfer of telecommunications between telecommunications companies~~ and may order that telecommunications be transmitted and transferred by the companies.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 567

HOUSE BILL NO. 1159
(Committee on State and Federal Government)
(At the request of the Public Service Commission)

PSC APPROVAL OF ASSET DISPOSAL

AN ACT to amend and reenact section 49-04-05 of the North Dakota Century Code, relating to commission approval when a public utility disposes of assets.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-04-05. ~~Consent of commission~~ Commission approval required to dispose of or encumber franchises, works, or systems - Exceptions. ~~No A public utility shall sell, assign, lease, transfer, mortgage, or otherwise may not dispose of or, encumber the whole or any part of, merge, or consolidate its franchise, works, or system necessary or useful in the performance of its duties to the public, nor at any time, directly or indirectly merge or consolidate such works, system, franchise, or any part thereof with any other person, corporation, or public utility, without first having secured from the commission an order authorizing it to do so. No such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger, or consolidation shall be binding upon the public without the approval of the prior commission approval. This section does not apply to the sale by public utilities;~~

1. Disposal or encumbrance of tangible property valued at less than five hundred thousand dollars.
2. Sale of securities registered with the federal securities and exchange commission.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 568

SENATE BILL NO. 2172
(Committee on Transportation)
(At the request of the Public Service Commission)

RAILROAD RIGHT OF WAY ACQUISITION

AN ACT to amend and reenact section 49-09-04.2 of the North Dakota Century Code, relating to priority in the sale and use of abandoned railroad right of way.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-09-04.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-09-04.2. Abandoned railroad right of way - Sale —~~First option — Public use — Wildlife use.~~

1. Whenever any state-owned land taken, held, and used pursuant to ~~section 49-09-04 for~~ When service is discontinued on any railroad right of way, or any railroad spur, industrial, switching, or sidetrack right of way located entirely within in the state is abandoned and the property is offered for sale, lease, exchange, or other disposal, the landowner or landowners adjoining the abandoned right of way shall be given next option to acquire the right of way upon reasonable terms, second only to the right of the public service commission to receive in trust and transfer the right of way to any person, firm, or corporation for the continued operation of a by the railroad or an affiliated entity, the property must first be offered for public purposes.
2. In all instances where railroad abandonment or discontinuance is governed by federal law and If right of way property along abandoned railroad right of way rail lines is first offered for public purposes and refused, the landowner or landowners adjoining the abandoned right of way lessee operators of grain and potato warehouses located on the property shall be given the next option to purchase, lease, exchange, or otherwise acquire the right of way upon reasonable terms property described in their lease. However, Adjoining agricultural landowners must thereafter be given the next option of the adjoining landowner does not supersede the right of the public service commission to receive in trust and transfer the right of way to any person, firm, or corporation for the continued operation of a railroad to acquire the property adjoining their land.
3. ~~Whenever~~ When abandoned railroad right of way is offered for wildlife programs or projects, the proposed acquisitions must first be ~~submitted to~~ approved by the board of county commissioners of

the county or counties in which the right of way is located ~~for the board's approval pursuant to~~ under section 20.1-02-17.1 if offered to the state game and fish department or ~~pursuant to~~ under section 20.1-02-18.1 if offered to the United States department of the interior; ~~its bureaus or agencies.~~

4. This section is subservient to the right of the public service commission to receive rail property in trust under section 49-09-04.1.

Approved April 11, 1989
Filed April 12, 1989

CHAPTER 569

SENATE BILL NO. 2063
(Legislative Council)
(Interim Legislative Audit and Fiscal Review Committee)

RAILROAD RIGHT OF WAY IDENTIFICATION

AN ACT to amend and reenact sections 49-09-10.2 and 49-09-11.7 of the North Dakota Century Code, relating to acquisition of railroad rights of way; and to repeal section 49-09-10.1 of the North Dakota Century Code, relating to identification of certain railroad rights of way by the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-09-10.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-09-10.2. Acquisition of right of way. An operating right of way described in section 49-09-10.1 may be acquired in accordance with this section. That acquisition is subject to the following requirements: Identification of right of way to be acquired, leased, or transferred.

1. Each carrier or other entity intending to acquire a, lease, or transfer an operating railroad right of way shall file a notice of intent to do so with the commission, if any of the following applies:
 - a. The acquisition or lease would be by a party that is not a railroad carrier, and would be of rail property that would be operated by a third party.
 - b. The operation would be by a new carrier and of rail property acquired or leased by a third party.
 - c. There would be a change of operators on the line.
2. The notice required under subsection 1 must designate the complete private or corporate identity of the acquiring or leasing party, the complete identity of the divesting carrier, and a thorough description of the line involved. The notice must include financial information as to the acquiring or leasing entity. These documents are confidential and may not be divulged by the commission to any party.
3. An acquiring, leasing, or divesting carrier shall attend conferences with the commission on reasonable notice, and shall respond to all questions and requests for information which are reasonably related, or may lead to information reasonably related,

to the issue of whether the proposed transaction is consistent with law.

SECTION 2. AMENDMENT. Section 49-09-11.7 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-09-11.7. Rules for enforcement. The commission may adopt rules, in accordance with chapter 28-32, consistent with and necessary for the enforcement of sections 49-09-11.1 through 49-09-11.4, and sections ~~49-09-10.1~~ and section 49-09-10.2.

SECTION 3. REPEAL. Section 49-09-10.1 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 570

SENATE BILL NO. 2187
(Committee on Transportation)
(At the request of the Public Service Commission)

RAILROAD RIGHT OF WAY FENCES

AN ACT to amend and reenact sections 49-11-24, 49-11-28, 49-11-29, and 49-11-30 of the North Dakota Century Code, relating to fencing on railroad rights of way and maintenance of cattleguards and gates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-11-24 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-11-24. Railroad right of way to be fenced - Fences.

1. Every person, company, or corporation owning or operating any line of railroad or railway within this state shall construct a fence on each side of its right of way and shall maintain such fence and keep it in good repair. Such fence shall be constructed within six months after the completion of the railroad or railway owner or lessee of land abutting any operating railroad's right of way who has a legal fence, as defined in section 47-26-01, along all sides of the land except the side abutting the right of way may make a written request of the owners or operators of the railroad to construct a fence along the right of way. Upon receipt of the request, the owners or operators shall erect, within a reasonable time, a legal fence along the right of way to confine livestock as required by section 36-11-01. The owners or operators shall maintain the fence so long as the owner or lessee maintains the fence around the other sides of the enclosure.
2. Where the railroad has a fence along its right of way, the owners or operators of the railroad shall maintain the fence without necessity of a request by the owner or lessee so long as the owner or lessee maintains a fence around the other sides of the enclosure.
3. Except for the penalty and liability imposed by sections 49-11-29 and 49-11-30, the failure to comply with the requirements of this section is not, in itself, evidence of negligence and the fact that this section has been violated is not admissible in any other action.

SECTION 2. AMENDMENT. Section 49-11-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-11-28. ~~Cattle guards and swinging~~ Swinging gates - When railroad required to maintain. Every person, company, or corporation owning or operating any line of railroad within this state shall:

- 1- ~~Construct and maintain suitable and safe cattle guards on both sides of all public crossings; and~~
- 2- ~~Construct and maintain suitable and safe swinging gates on both sides of all private crossings~~ Upon the written request of the owner or lessee of land abutting the railroad's right of way, the owners or operators of a railroad shall construct and maintain suitable and safe swinging gates on any side of a private crossing enclosed by the railroad under section 49-11-24. The request must be made at the same time a request is made under subsection 1 of section 49-11-24.

SECTION 3. AMENDMENT. Section 49-11-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-11-29. Failure to construct fence, ~~cattle guard, or swinging gate~~ - Penalty. Any person owning or operating any line of railroad within this state and refusing or neglecting to comply with any of the provisions of sections 49-11-24 through 49-11-28 ~~shall be~~ is guilty of a class A misdemeanor. A prosecution or conviction under sections 49-11-24 through 49-11-28 ~~shall does~~ not relieve such person from liability for the maiming or killing of livestock on such the right of way by reason of ~~his~~ that person's negligence.

SECTION 4. AMENDMENT. Section 49-11-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-11-30. Failure of railroad to fence - Damage to owner of stock - How collected. Any corporation operating a railroad and failing to fence the same against livestock running at large ~~and failing to maintain proper and sufficient cattle guards at all points where the duty to fence or maintain cattle guards exists, shall be~~ is liable to the owner of any stock killed or injured by reason of the want of such fence ~~or cattle guard~~ for the full amount of the damages sustained by the owner, unless the injury was occasioned by the grossly negligent act of the owner of the stock or ~~his~~ the owner's agent. To recover ~~the same, it shall be necessary for~~ the owner of the stock ~~to must~~ prove only the loss of or injury to ~~his~~ the owner's property. Notice in writing that a loss or injury has occurred, accompanied by an affidavit thereof, ~~shall must~~ be served upon an officer of the corporation or upon a station or ticket agent employed by ~~said the~~ corporation in the county where such the loss or injury occurred. If the corporation fails or neglects to pay ~~such damage the damages~~ within ninety days after the notice is served on it, the owner ~~shall be~~ is entitled to recover from the corporation double the amount of damages actually sustained by ~~him the owner,~~ and ~~twenty five dollars as an a reasonable~~ attorney's fee when it ~~shall be~~ is adjudged by a court of competent jurisdiction that the claimant is entitled to the amount claimed.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 571

SENATE BILL NO. 2337
(Senators Waldera, Maixner, Wogsland)
(Representatives R. Anderson, Murphy, Goetz)

SALTWATER TRANSPORTATION

AN ACT to amend and reenact subsection 13 of section 49-18-02 of the North Dakota Century Code, relating to the regulation of the transportation of saltwater by the public service commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 13 of section 49-18-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

13. To the transportation of rubbish or garbage. As used in this subsection, rubbish or garbage does not include saltwater produced or utilized in oil and gas exploration, development, and production activities.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 572

HOUSE BILL NO. 1081
(Committee on Transportation)
(At the request of the Public Service Commission)

CONTRACT MOTOR CARRIER PERMITS

AN ACT to amend and reenact section 49-18-23 of the North Dakota Century Code, relating to issuance of contract motor carrier permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-18-23 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-23. Issuance of contract carrier permit - Factors considered. The commission is vested with power and authority to may grant or deny, the permit prayed for by a contract motor carrier; or to grant it for the partial exercise only of the privilege sought. It may attach to the exercise of the privilege granted by such permit, such terms and conditions as in its judgment will in whole or in part, applications for contract carrier authority and may impose terms and conditions necessary to carry out the purposes of this chapter. No A permit shall may not be granted unless the applicant has established to the satisfaction of the commission that the privilege sought will not endanger the safety of the public nor interfere with the public use of the public highways; nor impair the condition or maintenance of such highways directly or indirectly; nor or impair the efficient public service of any authorized common carrier then adequately serving the same territory.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 573

HOUSE BILL NO. 1259
(Representatives Belter, V. Thompson)
(Senators Langley, Todd)

INTERSTATE MOTOR CARRIER FEES

AN ACT to amend and reenact sections 49-18-41.1 and 49-18-42 of the North Dakota Century Code, relating to the collection of fees for registration of interstate motor carriers and dedicating the use of the fees and providing for allocation of the fees; and to provide an appropriation and a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 49-18-41.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-41.1. Interstate carrier registration and identification. The ~~public service~~ commission is authorized to ~~collect~~ assess a ~~seven ten~~ dollar per vehicle fee as provided by rule for the registration and identification of interstate motor carriers operating within this state. The fee shall not exceed the maximums provided for by the laws of the United States. The motor vehicle department shall collect the fee and issue identification stamps on behalf of the commission. Until July 1, 1991, the fee assessed per vehicle under this section and collected before July 1, 1991, must be paid into the state treasury monthly and credited to the general fund. After July 1, 1991, three dollars of the fee assessed and collected per vehicle must be credited to the highway fund for the use of the highway patrol.

SECTION 2. AMENDMENT. Section 49-18-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-18-42. Auto transportation fund. ~~All~~ Except as otherwise provided under section 49-18-41.1, all fees collected by the commission, under the provisions of this chapter, shall must be paid into the state treasury monthly and ~~shall~~ must be credited to the general fund for the purpose of defraying the general expenses of the state government.

SECTION 3. AMENDMENT. Section 1 of House Bill No. 1012, as approved by the fifty-first legislative assembly, is hereby amended and reenacted to read as follows:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much thereof as may be necessary, are hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of human services and its various divisions for the purpose of defraying the expenses thereof, for the biennium beginning July 1, 1989, and ending June 30, 1991, as follows:

* NOTE: Section 49-18-41.1 was also amended by section 17 of Senate Bill No. 2243, chapter 72.

Salaries and wages		\$134,431,003
Data processing		11,330,151
Operating expenses		42,502,943
Equipment		1,082,113
Capital improvements		1,969,657
Grants, benefits, and claims		560,402,363
Community chemical dependency treatment enhancement		534,000
Developmentally disabled facility loan fund		1,837,956
Total all funds		<u>\$754,090,186</u>
Less estimated income	<u>517,062,486</u>	<u>518,392,486</u>
Total general fund appropriation	<u>\$237,027,700</u>	<u>\$235,697,700</u>

SECTION 4. APPROPRIATION. There is hereby appropriated from the general fund in the state treasury, not otherwise appropriated, the sum of \$1,165,000 or so much thereof as may be necessary, to the state board of higher education for the purpose of providing student financial assistance for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 5. LEGISLATIVE INTENT. It is the intent of the legislative assembly that, for purposes of section 11 of Senate Bill No. 2538, passed by the fifty-first legislative assembly, the revised estimated medicaid matching rate for the nine months ending June 30, 1991, is sixty-nine and eighty-two one hundredths percent. Other funds available from changes in the medicaid funding formula, as referred to in Senate Bill No. 2538, are those funds in excess of the revised estimated medicaid matching rate in this section.

Approved April 28, 1989
 Filed April 28, 1989

PUBLIC WELFARE

CHAPTER 574

SENATE BILL NO. 2537

(Tallackson)

(Approved by the Committee on Delayed Bills)

GRAFTON STATE SCHOOL LAND TRANSFER

AN ACT to authorize the director of the department of human services to transfer title and convey certain land owned by the state of North Dakota to job service North Dakota for use as a job service office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Grafton state school land transfer authorized. The director of the department of human services is authorized to transfer title and convey the following property to job service North Dakota:

A tract of land located in the southwest one-quarter of the southwest one-quarter of section thirteen, township one hundred fifty-seven north, range fifty-three west, fifth P. M., more accurately described as follows: commencing at a point seventy-five feet north and one hundred thirty-nine and nine-tenths feet east of the southwest corner of said section thirteen; hence continuing south 90 degrees 00 minutes 00 seconds east, and parallel to the south line of section thirteen, one hundred fifty feet; hence north 0 degrees 05 minutes 36 seconds east, two hundred eighty-three feet; hence north 90 degrees 00 minutes 00 seconds west, one hundred fifty feet; hence south 0 degrees 05 minutes 36 seconds west, two hundred eighty-three feet, to the point of beginning. Said tract of land contains 0.97 acres more or less.

The transfer of title and conveyance of this property shall be at no cost to job service North Dakota. The provisions of sections 54-01-05.2 and 54-01-05.5 do not apply to the transfer authorized by this Act. The property transferred under the authority of this Act may only be used for a job service office.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 575

SENATE BILL NO. 2291
(Senators Mushik, Heigaard, Olson)
(Representatives Dalrymple, Kelly, Haugland)

HUMAN SERVICES ADVISORY BOARD

AN ACT to create and enact a new section to chapter 50-06 of the North Dakota Century Code, relating to the creation of a human services advisory board; to amend and reenact sections 50-06-01, 50-06-01.3, 50-06-05.1, 50-06-16, and 50-06-17 of the North Dakota Century Code, relating to the authority of the human services advisory board and the structure of the department of human services; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01. ~~Definition~~ Definitions. ~~Whenever the word "department" is~~ As used in this chapter, it shall mean unless the context otherwise requires:

1. "Board" means the human services advisory board.
2. "Department" means the department of human services.

*SECTION 2. AMENDMENT. Section 50-06-01.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-01.3. ~~Executive~~ Appointment of executive director — ~~Appointment~~ - Compensation. ~~The governor shall appoint the executive director of the department shall be appointed by, and who shall serve at the pleasure of, the governor. The board may advise the governor concerning the appointment or reappointment of an executive director. The executive director shall take the oath of office required of civil officers by section 44-01-05 and shall must be bonded as required of civil officers by section 44-01-06. The executive director shall is entitled to receive compensation in the amount established by the governor within the limits of legislative appropriations.~~

SECTION 3. A new section to chapter 50-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Human services advisory board - Membership - Meetings - Compensation and expenses - Responsibilities.

1. The governor shall appoint nine members of the human services advisory board. Each member appointed to the board must possess expertise that the governor determines will assist the board in recommending and reviewing department policy for the delivery of human services. The board must represent a broad constituency from across the state, and must include persons who are recipients of

* NOTE: Section 50-06-01.3 was also amended by section 53 of Senate Bill No. 2056, chapter 69.

human services. No board member may be an employee of the department or serve simultaneously on a regional human service center advisory council.

2. The governor shall appoint three members with terms ending June 30, 1992, three members with terms ending June 30, 1994, and three members with terms ending June 30, 1996. One member must be appointed from each regional human service area and one member must be appointed at large. All subsequent appointments are for terms of six years, with the terms commencing on July first. A vacancy on the board may be filled for the unexpired term only. Members serve until their successors are appointed and may serve for no more than one full six-year term. The governor may remove a member for cause.
3. The governor or the governor's designee, who may not be an employee of the department, shall act as president of the board. Before September 1, 1990, and every July first thereafter, the board shall meet and elect a vice president, a secretary, and other officers as the board determines necessary. The board shall meet quarterly and at other times determined necessary by the executive director, the president, or a majority of the members of the board.
4. All board members are entitled to receive the same compensation for their services as provided in section 54-35-10 for members of the legislative council. Members are entitled, as provided in sections 44-08-04 and 54-06-09, to receive reimbursement for their necessary travel and mileage expenses incurred in attending meetings of the board and while engaged in the performance of their duties.
5. The board shall recommend and review policy for the department, and shall advise the executive director with respect to other issues and concerns.

SECTION 4. AMENDMENT. Section 50-06-05.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-05.1. Powers and duties of the department. The department ~~shall~~ **have** has the following powers and duties to be administered, with the advice of the board, by the department through its state office or through regional human service centers or otherwise as directed by it:

1. To act as the official agency of the state in any social welfare or human service activity initiated by the federal government not otherwise by law made the responsibility of another state agency.
2. To administer, allocate, and distribute any state and federal funds that may be made available for the purpose of providing financial assistance, care, and services to eligible persons and families who do not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.
3. To provide preventive, rehabilitative, and other human services to help families and individuals to retain or attain capability for independence or self-care.

4. To do needed research and study in the causes of social problems and to define appropriate and effective techniques in providing preventive and rehabilitative services.
5. To provide for the study, and to promote the well-being, of deprived, unruly, and delinquent children.
6. To provide for the placing and supervision of children in need of substitute parental care, subject to the control of any court having jurisdiction and control of any such child.
7. To recommend appropriate social legislation to the legislative assembly.
8. To direct and supervise county social service board activities as may be financed in whole or in part by or with funds allocated or distributed by the department.
9. To inform the public as to social conditions and ways of meeting social needs.
10. To secure, hold, and administer for the purpose for which it is established, any property and any funds donated to it either by will or deed, or otherwise, or through court order or otherwise available to the board or department, and to administer ~~said~~ those funds or property in accordance with the instructions in the instrument creating them or in accordance with the instructions in the court order or otherwise.
11. To formulate standards and make appropriate inspections and investigations in accordance with such standards in connection with all licensing activities delegated by law to the department including child-care facilities, nonmedical adult-care facilities and maternity homes, and persons or organizations receiving and placing children, and to require ~~such~~ those facilities, persons, and organizations to submit reports and information as the department may determine necessary.
12. To permit the making of any surveys of human service needs and activities if ~~deemed by the department~~ determined to be necessary and expedient.
13. To issue subpoenas, administer oaths, and compel attendance of witnesses and production of documents or papers whenever ~~the department deems it~~ necessary in making the investigations provided for herein or in the discharge of its other duties. A subpoena ~~shall~~ may not be issued to compel the production of documents or papers relating to any private child-caring or child-placing agency or maternity hospital or to compel the attendance as a witness of any officer or employee of those facilities except upon the order of a judge of the district court of the judicial district in which the facilities are located.
14. To provide insofar as staff resources permit appropriate human services, including social histories, social or social-psychological evaluations, individual, group, family, and marital counseling, and related consultation, when referred by self,

parent, guardian, county social service board, court, physician, or other individual or agency, and when application is made by self (if an adult or emancipated youth), parent, guardian, or agency having custody; also, on the same basis, to provide human services to children and adults in relation to their placement in or return from the Grafton state school, state hospital, or North Dakota industrial school.

15. To provide marital counseling to individuals ordered to participate in such treatment by the family court.
16. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, probation, and aftercare services when requested by the judge of a juvenile court, all reports to be kept confidential for the use of the judge except as may be disclosed by the judge.
17. To provide insofar as staff resources permit social services, including social-psychological evaluations, predisposition reports, treatment, and probation and parole services, when requested by the judge in a criminal case, all reports to be kept confidential for use by the judge except as may be disclosed by the judge.
18. To act as the official agency of the state in the administration of the food stamp program and to direct and supervise county administration of that program. Provided, however, that the department with the consent of the budget section of the legislative council may terminate the program should if the rate of federal financial participation in administrative costs provided under Public Law 93-347 be is decreased or limited, or should if the state or counties become financially responsible for all or a portion of the coupon bonus payments under the Food Stamp Act.
19. To administer, allocate, and distribute any funds made available for the making of direct cash assistance payments, housing assistance payments, and rental subsidies under any rental assistance programs initiated by the federal government not otherwise by law made the responsibility of another state agency possessing statewide jurisdiction.
20. To act as the official agency of the state in the administration of the energy assistance program; to direct and supervise county administration of that program; and to take such actions, give such directions, and adopt such rules, subject to review in the courts of this state, as may be necessary or desirable to carry out this subsection. Provided, however, that the department with the consent of the budget section of the legislative council may terminate the program should if the rate of federal financial participation in administrative costs be is decreased or limited to less than fifty percent of total administrative costs, or should if the state or counties become financially responsible for all or a portion of the cost of energy assistance program benefits.
21. ~~Repealed by S.L. 1987, ch. 582, § 30, effective July 14, 1987.~~
- ~~22.~~ To administer, allocate, and distribute any funds made available for the payment of the cost of the special needs of any child under

the age of twenty-one years, who is living in an adoptive home and would probably go without adoption except for acceptance by the adopted family, and whose adopted family does not have the economic ability and resources, as established by the department, to take care of the special needs of the child, including legal fees, maintenance costs, medical and dental expenses, travel costs, and other costs incidental to the care of ~~such~~ the child.

22. To exercise and carry out any other powers and duties granted the department under state law.

SECTION 5. AMENDMENT. Section 50-06-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-16. ~~Authority to adopt rules~~ Rulemaking authority. The department may adopt rules necessary to carry out ~~its~~ the responsibilities ~~under this chapter~~ of the department in conformity with any statute administered or enforced by the department. The board shall review the adoption, amendment, or repeal of any rules by the department. All rules adopted ~~shall~~ must be published in the North Dakota Administrative Code. Rules adopted by agencies prior to January 1, 1982, which relate to functions or agencies covered by this chapter ~~shall~~ remain in effect until such time as they are specifically amended or repealed ~~by the department~~.

SECTION 6. AMENDMENT. Section 50-06-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06-17. Biennial report to governor and office of management and budget - Budget estimates. ~~The department shall submit to the governor and the office of management and budget a board shall review and make recommendations concerning the biennial report as prescribed by section and budget estimate prior to the department's submission of the report and estimate in accordance with sections 54-06-04 and 54-44.1-04.~~

SECTION 7. EFFECTIVE DATE. This Act becomes effective on January 1, 1990.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 576

HOUSE BILL NO. 1110
(Committee on Human Services and Veterans Affairs)
(At the request of the Department of Human Services)

VOCATIONAL REHABILITATION ADVISORY BODIES

AN ACT to create and enact a new subsection to section 50-06.1-04 of the North Dakota Century Code, relating to the establishment of advisory bodies to the division of vocational rehabilitation; and to repeal section 25-15-03 of the North Dakota Century Code, relating to a vocational rehabilitation facilities advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 50-06.1-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Shall appoint such advisory bodies with emphasis on consumer participation as deemed necessary for compliance with any federal act pertaining to vocational rehabilitation or for the proper and efficient carrying out of the duties of the division.

SECTION 2. REPEAL. Section 25-15-03 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 577

HOUSE BILL NO. 1401
(Representatives Oban, Kelly)
(Senators Mushik, Heinrich)

BLIND AND VISUALLY IMPAIRED REHABILITATION PROGRAM

AN ACT to provide for the establishment of a rehabilitation teacher program throughout the state to serve the blind and visually impaired.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Establishment of rehabilitation teaching program - Authorization of positions. The office of vocational rehabilitation may establish two rehabilitation teacher positions and one half-time teacher and half-time supervisor position for the rehabilitation of the blind and visually impaired. Each teacher shall provide rehabilitation teaching services that may include evaluation, counseling, adjustment training, communication, mobility, and other rehabilitation services to the blind and the visually impaired. Those services must be provided in the home of blind and visually impaired individuals, nursing homes, intermediate care facilities, senior citizen centers, and other facilities and centers in which one may find blind or visually impaired individuals. Rehabilitation teachers may provide aids and appliances, as well as assistance with meal planning, medication management, transportation needs, and recreation and social needs. Rehabilitation teachers may provide orientation to blindness instruction for those working directly with or otherwise involved in daily activities of the blind and visually impaired, including home health aids, homemakers, senior companions, staff of nursing homes and other professionals, paraprofessionals, and family members. The administrator of services for the blind and deaf in the office of vocational rehabilitation shall coordinate the activities and the services to be provided by persons employed pursuant to the provisions of this Act.

SECTION 2. Cooperation between agencies. The office of vocational rehabilitation and other divisions of the department of human services shall work cooperatively to locate eligible clients and to identify and provide them with the services they require to lead a full and meaningful life.

Approved April 15, 1989
Filed April 17, 1989

CHAPTER 578

HOUSE BILL NO. 1167
(Committee on Human Services and Veterans Affairs)
(At the request of the Department of Human Services)

QUALIFIED SERVICE PROVIDERS

AN ACT to create and enact a new subsection to section 50-06.2-02 and a new section to chapter 50-06.2 of the North Dakota Century Code, relating to the definition of qualified service provider and the freedom of choice of qualified service provider; and to amend and reenact subsection 4 of section 50-06.2-02, section 50-06.2-03, and subsection 3 of section 50-06.2-04 of the North Dakota Century Code, relating to the definition of family home care, payment for human services, and the availability of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 50-06.2-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Family home care" means the provision of room, board, supervisory care, and personal services to an eligible elderly or disabled person by the spouse, or by one of the following relatives, or the current or former spouse of one of the following relatives, of the elderly or disabled person: parent, grandparent, adult child, adult sibling, or adult grandchild of an eligible elderly or disabled person, adult niece, or adult nephew. The family home care provider need not be present in the home on a twenty-four-hour basis if the welfare and safety of the client is maintained.

SECTION 2. A new subsection to section 50-06.2-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Qualified service provider" means a county agency or independent contractor which agrees to meet standards for service and operations established by the state agency.

SECTION 3. AMENDMENT. Section 50-06.2-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06.2-03. Powers and duties of the state agency. The state agency shall have the following powers or duties under this chapter:

1. To act as the official agency of the state in the administration of the human services programs for individuals and families in conformity with state and federal requirements.

2. To prepare, at least biennially, a comprehensive human services plan which must:
 - a. Include human services determined essential in effectuating the purposes of this chapter.
 - b. Detail the human services identified by the state agency for provision by human service centers and the services which the county agencies have agreed to make available in approved county plans as a condition for the receipt of any funds allocated or distributed by the state agency.
3. To make available, through county agencies or human service centers, any or all of the services set out in the comprehensive human services plan on behalf of those individuals and families determined to be eligible for those services under criteria established by the state agency.
4. To supervise and direct the comprehensive human services administered by county agencies and human service centers through standard-setting, technical assistance, approval of county and regional plans, preparation of the comprehensive human services plan, evaluation of comprehensive human service programs, and distribution of public money for services.
5. Within the limits of legislative appropriations and at rates determined payable by the state agency, to reimburse county agencies pay qualified service providers, which meet standards for services and operations, for the provision of the following services as defined in the comprehensive human service plan which are provided to persons who, on the basis of functional assessments, income, and resources, are determined eligible for the services in accordance with rules adopted by the state agency:
 - a. Homemaker services;
 - b. Chore services;
 - c. Respite care;
 - d. Home health aide services;
 - e. Case management;
 - f. Family home care;
 - g. Personal attendant care;
 - h. Adult family foster care; and
 - i. Such other services as the state agency determines to be essential and appropriate to sustain individuals in their homes and in their communities and to delay or prevent institutional care.
6. To take actions, give directions, and adopt rules as necessary to carry out the provisions of this chapter.

For purposes of this chapter, resources do not include the person's primary home and the first fifty thousand dollars in assets.

SECTION 4. AMENDMENT. Subsection 3 of section 50-06.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. To make available the human services detailed in the comprehensive human service plan which the county agency has included in the approved county plan and to provide such other human services as the county agency determines essential in effectuating the purposes of this chapter within the county. To the extent funding is made available under section 50-06.2-03 and chapter 50-24.1, the county plan must include the services enumerated in those provisions sections. The county agency must make these services available to any individual requesting service and determined eligible on the basis of functional assessment. The individual shall pay for the services in accordance with a fee scale based on family size and income. The county agency may contract with any public or private agency or person approved by the state agency qualified service provider in its provision of those enumerated services.

SECTION 5. A new section to chapter 50-06.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Freedom of choice. Each person eligible for services under this chapter, or the person's representative, must be free to choose among available qualified service providers that offer competitively priced services. The county agency shall inform each eligible applicant for services, provided under this chapter, of the identity of qualified service providers available to provide the service required by the applicant. The county agency shall make and document reasonable efforts to inform potential service providers of the anticipated need for services in the county.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 579

HOUSE BILL NO. 1521
(Representatives D. Olsen, A. Olson, Skjerven)
(Senator Nalewaja)

COUNTY HUMAN SERVICES LEVY

AN ACT to create and enact a new subsection to section 57-15-06.7 of the North Dakota Century Code, relating to the limitation on county levies for certain comprehensive human services programs; and to amend and reenact section 50-06.2-05 of the North Dakota Century Code, relating to the authority of the board of county commissioners to levy a tax for comprehensive human services programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06.2-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-06.2-05. Appropriation of county funds. The board of county commissioners of each county shall annually appropriate and make available to the poor relief fund an amount sufficient to pay the local expenses of administration and provision of the human services required by state law and by federal law or regulation as a condition for the receipt of federal financial participation in programs administered by county agencies under the provisions of this title. For purposes of this section, the board of county commissioners may levy an annual tax for poor relief purposes not exceeding the limitation in section 2 of this Act, and if this amount is not sufficient, may levy for deficiency purposes under chapter 50-03.

SECTION 2. A new subsection to section 57-15-06.7 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Counties levying an annual tax for poor relief purposes as provided in section 50-06.2-05 may levy a tax not exceeding twenty mills.

Approved April 3, 1989
Filed April 3, 1989

CHAPTER 580

SENATE BILL NO. 2090
(Committee on Human Services and Veterans Affairs)
(At the request of the Department of Human Services)

COUNTY SHARE FOR SOCIAL SERVICES

AN ACT to create and enact a new section to chapter 50-09 of the North Dakota Century Code, relating to the Family Support Act of 1988; to amend and reenact sections 50-09-20, 50-09-20.1, and 50-09-21 of the North Dakota Century Code, relating to the appropriation of county funds for certain programs, state reimbursement of certain county expenditures, and the amount for which the county is liable.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

State agency to submit plans - Administer Family Support Act. The state agency may submit state plans in forms that meet the requirements for such plans which are, or may be, imposed under the Family Support Act of 1988 [Pub. L. 100-485; 102 Stat. 2343]. The state agency may take actions reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of the Family Support Act of 1988 and the state plans submitted thereunder, including the issuance of policy manuals, forms, and program directives. The state agency may seek appropriate waivers of the requirements of federal statutes or regulations as authorized by federal law.

SECTION 2. AMENDMENT. Section 50-09-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-20. Appropriation of county funds. For the purpose of carrying out the provisions of this chapter, the board of county commissioners of each county annually shall appropriate and make available an amount sufficient to pay:

1. Local expenses of administration and the county's share of assistance payments as specified in ~~subsection 1 of~~ section 50-09-21; ~~and~~
2. Local expenses of administration of the child support enforcement program; ~~and~~
3. Local expenses of administration and the county's share of program costs of the early childhood services program, job opportunity and basic skills training program, transportation program, and case management program as specified in section 50-09-21.

If the financial condition of any county is such that it cannot make an appropriation or levy a tax for aid to dependent children or cannot issue warrants legally in an amount sufficient to provide the necessary funds to comply with the provisions of this chapter, the board of county commissioners shall report such fact to the state agency. After a hearing before the state agency, and such investigation as the state agency may make, the state agency may increase the amount to be supplied from state funds and adjust accordingly the amount to be supplied from county funds.

SECTION 3. AMENDMENT. Section 50-09-20.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-20.1. Amounts state liable for - Reimbursement by state. The state agency shall reimburse each county, upon claim being made therefor by the county agency, for fifty percent of the amount expended ~~for the child support enforcement program in by~~ the county agency in excess of the amount provided by the federal government for the administration of the child support enforcement program, the early childhood services program, the job opportunity and basic skills training program, the transportation program, and the case management program.

* SECTION 4. AMENDMENT. Section 50-09-21 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-21. Amount county liable for - Reimbursement by county. Each county shall reimburse the state agency, upon claim being made therefor by the state agency, for one-fourth of the amount expended, in the county, for aid to dependent children in such county, and program costs of the early childhood services program, job opportunity and basic skills training program, transportation program, and case management program, in excess of the amount provided by the federal government for assistance payments to dependent children and for the program costs, except payments for children approved and granted foster care for children, for which the county share of payment must be reimbursed to the state agency by the county liable therefor under chapter 50-02.

Approved April 28, 1989

Filed April 28, 1989

* NOTE: Section 50-09-21 was also amended by section 1 of Senate Bill No. 2163, chapter 581.

CHAPTER 581

SENATE BILL NO. 2163
(Committee on Human Services and Veterans Affairs)
(At the request of the Department of Human Services)

COUNTY REIMBURSEMENT FOR CHILDREN'S PROGRAMS

AN ACT to amend and reenact section 50-09-21 of the North Dakota Century Code, relating to the reimbursement of the county share of aid to dependent children, foster care, and subsidized adoption payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 50-09-21 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-09-21. Amount county liable for - Reimbursement by county.

1. Each county shall reimburse the state agency, upon claim being made therefor by the state agency, for one-fourth of the amount expended for aid to dependent children in such county, in excess of the amount provided by the federal government for assistance payments to dependent children; ~~except payments for children approved and granted foster care for children; for which the county share of payment must be reimbursed to the state agency by the county liable therefor under chapter 50-02.~~
2. Each county shall reimburse the state agency, upon claim being made therefor by the state agency, for an amount equal to one-half of that county's share of all counties' shares based upon the combined percentage average of the four-year period beginning November 1983 and ending October 1987, and the one-year period beginning November 1986 and ending October 1987, plus one-half of that county's share of all counties' shares allocated according to each county's percentage of population of persons under age eighteen according to the 1980 census, in excess of any amount provided by the federal government, for payments for children approved and granted foster care for children or subsidized adoption.

Approved March 14, 1989
Filed March 15, 1989

* Note: Section 50-09-21 was also amended by section 4 of Senate Bill No. 2090, chapter 580.

CHAPTER 582

HOUSE BILL NO. 1368
(Representatives J. DeMers, Smette)
(Senators Mushik, Nalewaja)

FAMILY CHILD CARE HOME LIMITS

AN ACT to amend and reenact subsection 6 of section 50-11.1-02 of the North Dakota Century Code, relating to the definition of a family child care home for the purpose of requirements for early childhood services facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 50-11.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Family child care home" means an occupied private residence in which early childhood services are provided for no more than seven children at any one time, except that the term includes a residence providing early childhood services to two additional school-aged children during the two hours immediately before and after the school day and all day, except Saturday and Sunday, when school is not in session during the official school year.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 583

SENATE BILL NO. 2198

(Committee on Human Services and Veterans Affairs)
(At the request of the Department of Human Services)

MEDICARE CATASTROPHIC COVERAGE AND SPOUSE RESOURCE

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the Medicare Catastrophic Coverage Act of 1988; to amend and reenact section 50-24.1-02.2 of the North Dakota Century Code, relating to the resources of a separated spouse; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Department to submit plans and seek waivers. The department of human services may submit state plans in forms that are consistent with and which meet requirements for such plans which are or may be imposed under the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100-360; 102 Stat. 729; 42 U.S.C. 1396a, et seq., as amended]. The department may take such actions as are reasonably necessary to conform the administration of programs under its supervision and direction to the requirements of the Medicare Catastrophic Coverage Act of 1988 and the state plans submitted thereunder, including the issuance of policy manuals, forms, and program directives. The department may seek appropriate waivers of the requirements of the federal statutes or regulations as authorized by federal law.

SECTION 2. AMENDMENT. Section 50-24.1-02.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-24.1-02.2. Resources of separated spouse not to be considered Community spouse resource allowance. In determining eligibility for medical assistance applicants and recipients, the department of human services may not consider the resources of a noninstitutionalized spouse of any applicant for or recipient of medical assistance when the applicant or recipient has lived separately and apart from the noninstitutionalized spouse for at least six months and the value of all resources, not otherwise disregarded, and separately owned by the noninstitutionalized spouse do not exceed the resource limitations in the property provisions of the rules adopted by the department of human services by more than shall establish a community spouse resource allowance of at least twenty-five thousand dollars for an ineligible community spouse.

SECTION 3. EFFECTIVE DATE. Section 2 of this Act is effective on October 1, 1989.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 584

HOUSE BILL NO. 1194
(Committee on Human Services and Veterans Affairs)
(At the request of the Office of Management and Budget)

NURSING HOME PAYMENT CLASSIFICATIONS

AN ACT to create and enact a new section to chapter 50-24.4 of the North Dakota Century Code, relating to nursing home resident payment classifications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-24.4 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Nursing home resident payment classifications - Procedures for reconsideration.

1. For purposes of this section:
 - a. "Department" means the department of health and consolidated laboratories; and
 - b. "Resident's representative" includes the resident's guardian or conservator, a person authorized or required to pay the nursing home expenses of the resident, or any other person designated by the resident in writing.
2. The department of human services shall establish resident payment classifications for the care of residents of nursing homes.
3. The department shall assign nursing home residents to the appropriate payment classification based upon assessments of the residents.
4. The department shall notify each resident, and the nursing home in which the resident resides, of the payment classification established under subsection 3. The notice must inform the resident of the classification that was assigned, the opportunity to review the documentation supporting the classification, the opportunity to obtain clarification from the department, and the opportunity to appeal the classification. The notice of resident classification must be sent by first-class mail. The individual resident notices may be sent to the resident's nursing home for distribution to the resident in which event the nursing home is responsible for the distribution of the notice to the resident and to the resident's representative, if any. This notice must be distributed to the resident and sent first-class mail or hand-delivered to the resident's representative within three

working days after the nursing home's receipt of the notice from the department.

5. The resident or the nursing home may appeal the assigned payment classification to the department. The appeal must be submitted in writing to the department within thirty days of the receipt of the notice of resident classification. For appeals submitted by or on behalf of the resident, the time period for submission of the request begins on the date the classification notice is delivered to the resident, or mailed or delivered to the resident's representative, whichever is latest. The appeal must be accompanied by the name of the resident, the name and address of the nursing home in which the resident resides, the reasons for the appeal, the requested classification changes, and documentation supporting the requested classification. The documentation accompanying the appeal is limited to documentation intended to establish that the needs of the resident, at the time of the assessment resulting in the disputed classification, justify a change of classification.
6. Upon written request, the nursing home shall give the resident or the resident's representative a copy of the assessment form and the other documentation that was given to the department to support the assessment findings. The nursing home shall also provide access to and a copy of other information from the resident's record that has been requested by or on behalf of the resident to support a resident's appeal. A copy of any requested material must be provided within three working days of receipt of a written request for the information. Upon request, the nursing home shall assist the resident in preparing an appeal.
7. In addition to the information required in subsection 5, an appeal by a nursing home must be accompanied by the following information: the date the resident payment classification notices were received by the nursing home; the date the classification notices were distributed to the resident or the resident's representative; and a copy of a notice of appeal sent to the resident or to the resident's representative. This notice must tell the resident or the resident's representative that the resident's classification is being appealed, the reason for the appeal, that the resident's rate will change if the appeal is approved by the department and the extent of the change, that copies of the nursing home's appeal and supporting documentation are available for review, and that the resident also has the right to appeal. If the nursing home fails to provide this information with the appeal, the appeal must be denied, and the nursing home may not make further appeals concerning that specific resident payment classification until such time as the resident's payment classification is reestablished by the department.
8. The appeal determination of the department must be made by individuals not involved in reviewing the assessment that established the disputed classification. The appeal determination must be based upon the initial assessment and upon the information provided to the department under subsection 5. If the department determines that it is necessary for the appeal determination, it may conduct onsite reviews. Within fifteen working days of

receiving the appeal, the department shall affirm or modify the original resident classification. The original classification must be modified if the department determines that the assessment resulting in the classification did not accurately reflect the needs of the resident at the time of the assessment. The resident and the nursing home must be notified within five working days after the decision is made.

9. The appeal determination under subsection 8 is the final administrative decision of the agency. That decision is subject to appeal to the district court, and for that purpose, the decision must be treated as a decision on a petition for rehearing made pursuant to section 28-32-14. Appeal to the district court must be taken in the manner required by section 28-32-15.

Approved March 14, 1989

Filed March 15, 1989

CHAPTER 585

SENATE BILL NO. 2146
(Committee on Human Services and Veterans Affairs)
(At the request of the Department of Human Services)

CHILD ABUSE AND NEGLECT REPORTING

AN ACT to amend and reenact subsection 3 of section 50-25.1-02, subsection 1 of section 50-25.1-03, sections 50-25.1-03.1, 50-25.1-04, 50-25.1-05, subsection 9 of section 50-25.1-11, and section 50-25.1-13 of the North Dakota Century Code, relating to child abuse and neglect; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 50-25.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Department" means the department of human services or its designee.

SECTION 2. AMENDMENT. Subsection 1 of section 50-25.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, addiction counselor, social worker, day care center or any other child care worker, police or law enforcement officer having knowledge of or reasonable cause to suspect that a child ~~coming before that person in that person's official or professional capacity~~ is abused or neglected shall report the circumstances to the department ~~or the department's designee~~ if the knowledge or suspicion is derived from information received by that person in that person's official or professional capacity.

SECTION 3. AMENDMENT. Section 50-25.1-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-03.1. Photographs and x-rays. Any person or official required to report under this chapter may cause to be taken color photographs of the areas of trauma visible on a child who is the subject of a report and, if indicated by medical consultation, cause to be performed a radiological examination of the child without the consent of the child's parents or guardian. All photographs taken pursuant to this section must be taken by law enforcement officials, physicians, or medical facility professionals upon the request of any person or official required to report under this chapter.

Photographs and x-rays taken, or copies of them, must be sent to the department or the department's designee at the time the initial report of child abuse or neglect is made or as soon thereafter as possible.

SECTION 4. AMENDMENT. Section 50-25.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-04. Method of reporting. All persons mandated or permitted to report cases of known or suspected child abuse or neglect shall immediately cause oral or written reports to be made to the department or the department's designee. Oral reports must be followed by written reports within forty-eight hours if so requested by the department or the department's designee. A requested written report must include information specifically sought by the department if the reporter possesses or has reasonable access to that information. Reports involving known or suspected institutional child abuse or neglect must be made and received in the same manner as all other reports made under this chapter.

*** SECTION 5. AMENDMENT.** Section 50-25.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05. Investigation. The department, in accordance with rules adopted by the department, shall forthwith investigate, or cause to be investigated immediately initiate an investigation, or cause an investigation of, any report of child abuse or neglect made directly to the department, including, when appropriate, the investigation of the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect.

SECTION 6. AMENDMENT. Subsection 9 of section 50-25.1-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. Parents or a legally appointed guardian of a child who is suspected to be of being, or having been, abused or neglected; provided, however, that subsection 4 governs the availability of information to a parent or guardian who is also the subject of a report, provided the identity of persons making reports or supplying information under this chapter is protected.

**** SECTION 7. AMENDMENT.** Section 50-25.1-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-13. Penalty for failure to report - False reports. Any person required by this chapter to report or to supply information concerning a case of known or suspected child neglect or abuse who willfully, as defined in section 12.1-02-02, fails to do so is guilty of a class B misdemeanor. Any person who willfully, as defined in section 12.1-02-02, makes a false report, or provides false information which causes a report to be made, under this chapter is guilty of a class B misdemeanor unless the false report is made to a law enforcement official, in which case the person who causes the false report to be made is guilty of a class A misdemeanor.

Approved March 31, 1989
Filed March 31, 1989

*** NOTE:** Section 50-25.1-05 was also amended by section 1 of Senate Bill No. 2057, chapter 586.

**** NOTE:** Section 50-25.1-13 was also amended by section 2 of Senate Bill No. 2061, chapter 588.

CHAPTER 586

SENATE BILL NO. 2057
(Legislative Council)
(Interim Law Enforcement Committee)

CHILD ABUSE OR NEGLECT INVESTIGATIONS

AN ACT to create and enact a new section to chapter 50-25.1 of the North Dakota Century Code, relating to interviews conducted on school property by law enforcement agencies or the department of human services pursuant to investigations of reports of child abuse or neglect; and to amend and reenact section 50-25.1-05 of the North Dakota Century Code, relating to investigations of reports of child abuse or neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 50-25.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-05. Investigation. The department, in accordance with rules adopted by the department, shall ~~forthwith investigate, or cause to be investigated,~~ immediately initiate an investigation, or cause an investigation of any report of child abuse or neglect made directly to the department, including, when appropriate, the home or the residence of the child, any school or child care facility attended by the child, and the circumstances surrounding the report of abuse or neglect. If the report alleges a violation of a criminal statute involving sexual or physical abuse, the department, or the department's designee, and an appropriate law enforcement agency shall coordinate the planning and execution of their investigation efforts to avoid a duplication of factfinding efforts and multiple interviews. The department, department's designee, or appropriate law enforcement agency may interview, without the consent of a person responsible for the child's welfare, the alleged abused or neglected child and any other child who currently resides or who has resided with the alleged perpetrator. The department, department's designee, or law enforcement agency may conduct the interview at a school, child care facility, or any other place where the alleged abused or neglected child or other child is found.

SECTION 2. A new section to chapter 50-25.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Interviews on school property. The department, department's designee, or appropriate law enforcement agency shall notify the school principal or other appropriate school administrator of its intent to conduct an interview on school property pursuant to section 50-25.1-05. The school administrator may not disclose the nature of the notification or any other related information concerning the interview to any person, including a person responsible for the child's welfare. The school administrator and department, department's designee, or law enforcement agency shall make every effort to reduce the disruption of the educational program of the child, other students, or school staff when an interview is conducted on school property.

Approved March 22, 1989
Filed March 23, 1989

* NOTE: Section 50-25.1-05 was also amended by section 5 of Senate Bill No. 2146, chapter 585.

CHAPTER 587

SENATE BILL NO. 2059
(Legislative Council)
(Interim Law Enforcement Committee)

CHILD ABUSE INVESTIGATION RULES

AN ACT to create and enact a new section to chapter 50-25.1 of the North Dakota Century Code, relating to the adoption of rules by the department of human services to resolve complaints and conduct reviews concerning investigations of reports of child abuse or neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-25.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Department of human services to adopt rules for review of investigations. The department of human services shall adopt rules to resolve complaints and conduct appeal hearings requested by the subject of a report of suspected child abuse or neglect who is aggrieved by the conduct of the investigation of the suspected child abuse or neglect.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 588

SENATE BILL NO. 2061
(Legislative Council)
(Interim Law Enforcement Committee)

CHILD ABUSE REPORT PROTECTION AND PENALTY

AN ACT to amend and reenact sections 50-25.1-09.1 and 50-25.1-13 of the North Dakota Century Code, relating to employer retaliation against employees in cases of child abuse or neglect and falsified reports of child abuse or neglect.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-25.1-09.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-09.1. ~~Employee discipline~~ Employer retaliation prohibited.

1. An employer who ~~imposes any form of employee discipline~~ retaliates against an employee solely because ~~that~~ the employee in good faith reported having reasonable cause to suspect that a child was abused or neglected ~~shall be~~, or because the employee is a child with respect to whom a report was made, is guilty of a class B misdemeanor. ~~It shall be is~~ a defense to any charge brought under this section that the presumption of good faith, described in section 50-25.1-09, has been rebutted.
2. The employer of a person required or permitted to report pursuant to section 50-25.1-03 who retaliates against the person because of a report of abuse or neglect is liable to that person in a civil action for all damages, including exemplary damages, costs of the litigation, and reasonable attorney's fees.
3. There is a rebuttable presumption that any adverse action within ninety days of a report is retaliatory. For purposes of this subsection, an "adverse action" is action taken by an employer against the person making the report or the child with respect to whom a report was made, including:
 - a. Discharge, suspension, termination, or transfer from any facility, institution, school, agency, or other place of employment;
 - b. Discharge from or termination of employment;
 - c. Demotion or reduction in remuneration for services; or

d. Restriction or prohibition of access to any facility, institution, school, agency, or other place of employment, or persons affiliated with it.

* SECTION 2. AMENDMENT. Section 50-25.1-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

50-25.1-13. Penalty for failure to report - ~~False~~ Penalty and civil liability for false reports. Any person required by this chapter to report a case of known or suspected child neglect or abuse who willfully, as defined in section 12.1-02-02, fails to do so is guilty of a class B misdemeanor. Any person who willfully, as defined in section 12.1-02-02, makes a false report, or provides false information which causes a report to be made, under this chapter is guilty of a class B misdemeanor unless the false report is made to a law enforcement official, in which case the person who causes the false report to be made is guilty of a class A misdemeanor. A person who willfully makes a false report, or willfully provides false information that causes a report to be made, under this chapter is also liable in a civil action for all damages suffered by the person reported, including exemplary damages.

Approved March 17, 1989
Filed March 17, 1989

* NOTE: Section 50-25.1-13 was also amended by section 7 of Senate Bill No. 2146, chapter 585.

CHAPTER 589

HOUSE BILL NO. 1058
(Legislative Council)
(Interim Law Enforcement Committee)

VULNERABLE ADULT PROTECTIVE SERVICES

AN ACT to establish a program of protective services for vulnerable adults; to provide for a statement of legislative intent regarding the funding of the vulnerable adult protective services program; to repeal section 14-07.1-09 of the North Dakota Century Code, relating to immunity for making reports and penalties for making false reports; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Abuse" means any willful act or omission of a caregiver or any other person which results in physical injury, mental anguish, unreasonable confinement, sexual abuse or exploitation, or financial exploitation to or of a vulnerable adult.
2. "Adult" includes a minor emancipated by marriage.
3. "Adult protective services" means remedial, social, legal, health, mental health, and referral services provided for the prevention, correction, or discontinuance of abuse or neglect which are necessary and appropriate under the circumstances to protect an abused or neglected vulnerable adult, ensure that the least restrictive alternative is provided, prevent further abuse or neglect, and promote self-care and independent living. The term includes the following services provided by the department or the department's designee:
 - a. Receiving, evaluating, and assessing reports of alleged abuse or neglect;
 - b. Arranging for and coordinating the provision of essential services;
 - c. Providing case management and counseling for the purposes of planning and providing social and other services needed by vulnerable adults;
 - d. Arranging for and coordinating the provision of other services, including financial management or assistance, legal assistance, and the services of domestic violence programs;

- e. Monitoring the delivery of services to vulnerable adults and making progress assessments; and
 - f. Arranging for or providing, and coordinating, other services consistent with this Act.
- 4. "Caregiver" means any person who has assumed the legal responsibility or a contractual obligation for the care of a vulnerable adult, or has voluntarily assumed responsibility for the care of a vulnerable adult. The term includes a facility operated by any public or private agency, organization, or institution which provides services to, and has assumed responsibility for the care of, a vulnerable adult.
 - 5. "Department" means the department of human services.
 - 6. "Essential services" means those services necessary to maintain and safeguard the physical and mental health of a vulnerable adult which include sufficient and appropriate food and clothing, temperate and sanitary shelter, treatment for mental or physical needs, appropriate treatment for medical needs as determined by a physician or other health care provider, and proper supervision.
 - 7. "Financial exploitation" means the taking or misuse of property or resources of a vulnerable adult by means of undue influence, breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means.
 - 8. "Least restrictive alternative" means adult protective services provided in a manner no more restrictive of a vulnerable adult's liberty and no more intrusive than necessary to achieve and ensure the provision of essential services.
 - 9. "Living independently" includes using the telephone, shopping, preparing food, housekeeping, and administering medications.
 - 10. "Mental anguish" means psychological or emotional damage that requires medical treatment or care, or is characterized by behavioral change or physical symptoms.
 - 11. "Neglect" means the failure of a caregiver to provide essential services necessary to maintain the physical and mental health of a vulnerable adult, or the inability or lack of desire of the vulnerable adult to provide essential services necessary to maintain and safeguard the vulnerable adult's own physical and mental health.
 - 12. "Physical injury" means damage to bodily tissue caused by nontherapeutic conduct, which includes fractures, bruises, lacerations, internal injuries, dislocations, physical pain, illness, or impairment of physical function.
 - 13. "Self-care" includes maintaining personal hygiene, eating, and dressing.

14. "Sexual abuse or exploitation" includes those sex offenses defined in sections 12.1-20-02, 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, and 12.1-20-11.
15. "Substantial functional impairment" means a substantial incapability, because of physical limitations, of living independently or providing self-care as determined through observation, diagnosis, evaluation, or assessment.
16. "Substantial mental impairment" means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by observation, diagnosis, evaluation, or assessment.
17. "Vulnerable adult" means an adult who has a substantial mental or functional impairment.
18. "Willfully" means willfully as defined in section 12.1-02-02.

SECTION 2. Adult protective services program - Rules. The department, with the advice and cooperation of county social service boards, shall develop, administer, and cause to be implemented a program of protective services for vulnerable adults consistent with this Act. In developing and administering the program, the department, within the limits of legislative appropriation, shall allocate and distribute funds for the purpose of providing adult protective services. All law enforcement agencies, courts of competent jurisdiction, and appropriate state and local agencies shall cooperate in the implementation and enforcement of this Act. The department may adopt rules in accordance with chapter 28-32 for the purpose of implementing the provisions of this Act.

SECTION 3. Voluntary reporting of abuse or neglect - Method of reporting.

1. A person who has reasonable cause to believe that a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, may report the information to the department or the department's designee or to an appropriate law enforcement agency. A law enforcement agency receiving a report under this section shall immediately notify the department or the department's designee of the report.
2. A person reporting under this section may make an oral or written report, as soon as possible. To the extent reasonably possible, a person who makes a report under this section shall include in the report:
 - a. The name, age, and residence address of the alleged vulnerable adult;
 - b. The name and residence address of the caregiver, if any;
 - c. The nature and extent of the alleged abuse or neglect or the conditions and circumstances that would reasonably be expected to result in abuse or neglect;

- d. Any evidence of previous abuse or neglect, including the nature and extent of the abuse or neglect; and
- e. Any other information that in the opinion of the person making the report may be helpful in establishing the cause of the alleged abuse or neglect, and the identity of the individual responsible for the alleged abuse or neglect.

SECTION 4. Referral of complaints concerning long-term care facilities. Any report received by the department or the department's designee under section 3 of this Act complaining of any administrative action, as defined in section 50-10.1-01, that may adversely affect or may have adversely affected the health, safety, welfare, or personal or civil rights of a resident in a long-term care facility, as defined in section 50-10.1-01, or a person who was discharged from a long-term care facility within nine months of the complaint, must be referred to the state long-term care ombudsman for investigation pursuant to chapter 50-10.1.

SECTION 5. Evaluation and assessment - Participation by law enforcement agencies - Entry.

1. The department or the department's designee shall immediately evaluate and assess any report received by the department or the department's designee under section 3 of this Act, including the residence of the alleged vulnerable adult and the circumstances surrounding the report. For the purpose of evaluating a report or providing other adult protective services, the department or the department's designee may:
 - a. Interview the alleged vulnerable adult, with or without notice to the caregiver or any other person, and interview the caregiver and any other person who may have knowledge of the circumstances surrounding the report;
 - b. Enter any premises in which the alleged vulnerable adult is an occupant, with the consent of the alleged vulnerable adult or the caregiver;
 - c. Have access to all records of the vulnerable adult:
 - (1) If the vulnerable adult, or the caregiver or legal representative of the vulnerable adult, has authorized the department or the department's designee to have access; or
 - (2) If the vulnerable adult, because of a substantial functional or mental impairment, is unable to authorize the department or the department's designee to have such access, does not have a legal guardian or other legal representative, and is a person with respect to whom a report was received by the department or the department's designee; and
 - d. Coordinate the assessment and the provision of other adult protective services with other state or local agencies, departments, or institutions, including the protection and advocacy project under the supervision of the executive committee of the governor's council on human resources, or

private agencies, organizations, and professionals providing services necessary or advisable for the vulnerable adult.

2. If a report alleges, or circumstances surrounding the report indicate, a violation of a criminal statute or an imminent danger of serious physical injury or death of the vulnerable adult, the department or the department's designee shall notify the appropriate law enforcement agency. In such a case, the law enforcement agency may investigate the allegations in the report, take immediate steps if necessary to protect the vulnerable adult, and institute legal proceedings if appropriate. The law enforcement agency shall notify the department or the department's designee if such action is taken. This section does not limit the responsibilities of law enforcement agencies to enforce the laws of this state or preclude law enforcement agencies from investigating, as appropriate, any alleged criminal conduct. In all other cases of alleged abuse or neglect, the department or the department's designee may request assistance in an evaluation or the provision of other adult protective services from an appropriate law enforcement agency if necessary under the circumstances.
3. If the alleged vulnerable adult, or the caregiver, does not consent to an evaluation or investigation, a search warrant may be issued by a magistrate pursuant to law upon a showing of probable cause to believe that abuse or neglect has occurred. A law enforcement officer may make a reasonable entry of the premises without a search warrant or consent of the alleged vulnerable adult or caregiver for the purpose of rendering assistance if the officer has probable cause to believe that the delay of entry would cause the alleged vulnerable adult to be in imminent danger of serious physical injury or death.

SECTION 6. Provision of adult protective services. If the department or the department's designee determines that a vulnerable adult demonstrates a need for adult protective services, the department or the department's designee shall provide, or arrange for the provision of, adult protective services, provided the vulnerable adult consents to and accepts the services.

SECTION 7. Refusal or inability to accept adult protective services - Department alternatives. If a vulnerable adult who is subject to abuse or neglect is unable to consent and accept, or the caregiver refuses, adult protective services determined by the department or the department's designee to be necessary under this Act, the department or the department's designee may pursue any administrative, legal, and other remedies authorized by law which are necessary and appropriate under the circumstances to protect the vulnerable adult and prevent further abuse or neglect. The state's attorney of the county in which the vulnerable adult resides or is located shall assist the department or the department's designee, upon request, in pursuing an appropriate remedy. Available remedies include seeking:

1. The appointment of a guardian under chapter 30.1-28 or a conservator under chapter 30.1-29;
2. A restraining order or other court order necessary under the circumstances;

3. The removal of an abusive or neglectful guardian or conservator and appointment of a suitable person as guardian or conservator, pursuant to sections 30.1-28-07 and 30.1-29-15;
4. The provision of appropriate treatment under chapter 25-03.1;
5. The criminal prosecution of the individual responsible for the abuse or neglect; and
6. Any other available administrative, legal, or other remedies on behalf of the vulnerable adult.

SECTION 8. Cost of adult protective services. The vulnerable adult is responsible for the costs of providing adult protective services, except the receipt, evaluation, and assessment of reports of suspected abuse or neglect pursuant to subdivision a of subsection 3 of section 1 of this Act, if the department or the department's designee determines, based on standards set by the department, that the vulnerable adult is financially capable of paying for the protective services received either through the vulnerable adult's own income or resources or other programs for which the vulnerable adult may be eligible. The department or the department's designee is not responsible for the cost of providing adult protective services unless the provision of the services is specifically provided by law and funding exists to provide the services.

SECTION 9. Immunity from liability. The following persons are immune from any civil or criminal liability that otherwise might result from the person's actions taken pursuant to this Act:

1. Any person, other than an alleged perpetrator, making a report or participating in an investigation, evaluation, or assessment under this Act if the person is acting in good faith.
2. Any person, employed by the department or the department's designee or a law enforcement agency, conducting or supervising an investigation, evaluation, or assessment or implementing or enforcing the provisions of this Act if the person is acting in good faith and exercising due care.

SECTION 10. Penalty and civil liability for false reports.

1. Any person who willfully makes a false report, or provides false information which causes the report to be made, is guilty of a class B misdemeanor unless the false report is made to a law enforcement official, in which case the person who causes the false report to be made is guilty of a class A misdemeanor.
2. A person who willfully makes a false report, or provides false information that causes a report to be made, is liable in a civil action for all damages suffered by the person reported.

SECTION 11. Retaliation prohibited - Presumption - Penalty.

1. An employer who imposes any form of discipline or retaliation against an employee solely because the employee reported in good faith having knowledge of or reasonable cause to suspect that a vulnerable adult is or has been abused or neglected, or because the

employee is a vulnerable adult with respect to whom a report was made, is guilty of a class B misdemeanor.

2. The employer of a person permitted to report pursuant to section 3 of this Act who retaliates against the person because of a report is liable to that person in a civil action for all damages.
3. A rebuttable presumption that retaliation has occurred arises when an adverse action is taken within ninety days of the report. An adverse action includes:
 - a. The discharge from or termination of employment;
 - b. The demotion, negative work performance evaluation, reduction of hours worked, reduction of benefits or work privileges, or reduction in remuneration for services of the employee; or
 - c. The restriction or prohibition of access by the employee to any place of employment, or persons affiliated with the place of employment.

SECTION 12. Confidentiality of records - Authorized disclosures. All reports made under this Act and all records and information obtained or generated as a result of the reports are confidential, but must be made available to:

1. A physician who examines a vulnerable adult whom the physician reasonably suspects may have been subject to abuse or neglect.
2. Authorized staff of the department or the department's designee, law enforcement agencies, and other agencies investigating, evaluating, or assessing the report or providing adult protective services.
3. A person who is the subject of a report if the identity of persons reporting under section 3 of this Act is protected.
4. Public officials, and their authorized agents, who require the information in connection with the discharge of their official duties.
5. A court when it determines that the information is necessary for determination of an issue before the court.
6. A person engaged in a bona fide research or auditing purpose if no information identifying the subjects of a report is made available to the researcher or auditor.

SECTION 13. Information, education, and training programs.

1. The department, in cooperation with county social service boards and law enforcement agencies, shall conduct a public information and education program. The elements and goals of the program must include:
 - a. Informing the public regarding the laws governing the abuse or neglect of vulnerable adults, the voluntary reporting

authorized by this Act, and the need for and availability of adult protective services.

- b. Providing caregivers with information regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the caregiver and vulnerable adult relationship.
2. The department, in cooperation with county social service boards and law enforcement agencies, shall institute a program of education and training for the department, the department's designee, and law enforcement agency staff and other persons who provide adult protective services.

SECTION 14. Implementation contingent upon appropriation. The department and county social service boards are not required to implement or enforce this Act with respect to any region, area, or county of this state if the legislative assembly does not provide an appropriation to support the implementation and enforcement of this Act within that region, area, or county.

SECTION 15. LEGISLATIVE INTENT - PROGRAM FUNDING. It is the intent of the legislative assembly that \$150,000 of the appropriation to the department of human services, as contained in Senate Bill No. 2538, shall be used to continue the adult protective service demonstration program, pursuant to this Act, as initially authorized by section 2 of chapter 293 of the 1987 Session Laws of North Dakota, in Cass County and the multicounty region served by the Lake Region human service center.

SECTION 16. REPEAL. Section 14-07.1-09 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

SECTION 17. EFFECTIVE DATE. Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, subsection 1 of section 13, and section 16 of this Act become effective on January 1, 1990.

Approved April 28, 1989
Filed April 28, 1989

SALES AND EXCHANGES

CHAPTER 590

SENATE BILL NO. 2206
(Committee on Industry, Business and Labor)
(At the request of the Public Service Commission)

AUCTIONEERS AND CLERKS

AN ACT to create and enact a new subsection to section 51-05.1-04 and a new section to chapter 51-05.1 of the North Dakota Century Code, relating to auctioneers and auction clerks and related definitions; to amend and reenact subdivision b of subsection 1 of section 51-05.1-03 and section 51-05.1-07 of the North Dakota Century Code, relating to auctioneers and auction clerks; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 1 of section 51-05.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

b. Made ~~any~~ a substantial and willful misrepresentation with ~~reference~~ relating to ~~any~~ an auction sale which ~~is injurious to~~ injures the party for which he acts as agent.

SECTION 2. A new subsection to section 51-05.1-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Seller" means the owner or consignor of property to be sold at auction.

SECTION 3. A new section to chapter 51-05.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Written contracts. No auctioneer may sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. The contract must identify the property, commission rate, any restrictions on sale, whether the auctioneer is authorized to purchase for the auctioneer at the sale, and payment of sale expenses and proceeds. The auctioneer shall retain a copy of each contract for two years after the auction. This section does not apply to livestock markets.

SECTION 4. AMENDMENT. Section 51-05.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-05.1-07. Penalty. Any person violating any of the provisions of this chapter ~~shall be~~ is guilty of ~~an infraction~~ a class B misdemeanor.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 591

HOUSE BILL NO. 1353
(Representative Ulmer)
(Senator Mushik)

MOTOR VEHICLE RETURNS

AN ACT to amend and reenact subsection 3 of section 51-07-18 and section 51-07-22 of the North Dakota Century Code, relating to the location of dispute settlement hearings when a consumer seeks to return a defective motor vehicle and disclosure upon resale of returned vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 51-07-18 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. If a manufacturer has established or participates in an informal dispute settlement procedure which that substantially complies with the substantive rules of the federal trade commission, 16 CFR 703, or if the manufacturer participates in a consumer and industry appeals, arbitration, or mediation appeals board whose decisions are binding on the manufacturer, the remedy under subsection 1 is not available to a consumer who has not first resorted to that procedure. If the consumer requests an oral presentation before the board or dispute settlement mechanism, the hearing must take place in the state in which the consumer resides. The attorney general shall, on application, issue a determination of whether an informal dispute resolution mechanism qualifies under this subsection.

SECTION 2. AMENDMENT. Section 51-07-22 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

51-07-22. Resale of returned passenger motor vehicles prohibited - Penalty. A person may not sell in this state a passenger motor vehicle that was returned to the manufacturer in accordance with sections 51-07-16 through 51-07-22. A person may not ship or deliver for resale in another state a passenger motor vehicle returned to the manufacturer in accordance with sections 51-07-16 through 51-07-22 unless full disclosure of the reasons for return is made to any prospective buyer. Violation of this section is a class B misdemeanor.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 592

SENATE BILL NO. 2178
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

FRANCHISE INVESTMENT

AN ACT to amend and reenact subsection 1 of section 51-19-04 and subsection 2 of section 51-19-17 of the North Dakota Century Code, relating to requirements of, and exemptions from, the franchise investment law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 51-19-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. There shall be exempted from the provisions of section 51-19-03 the offer to sell, the offer to purchase, the sale, and the purchase of a franchise if the franchisor:
 - a. Has a net worth on a consolidated basis according to its most recent audited financial statement of not less than ten million dollars; or the franchisor has a net worth according to its most recent financial statement of not less than one million dollars and is at least eighty percent owned by a corporation which has a net worth on a consolidated basis according to its most recent audited financial statement of not less than ten million dollars; and
 - b. Has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer or sale; or has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale; or if any corporation which owns at least eighty percent of the franchisor has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer or sale; or such corporation has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale; and
 - c. Except as provided in subdivision d, discloses in writing to each prospective franchisee, at least seven days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least seven days prior to the receipt of any consideration, whichever occurs first, the following information:
 - (1) The name of the franchisor, the name under which the franchisor is doing or intends to do business, and the

name of any parent or affiliated company that will engage in business transactions with franchisees.

- (2) The franchisor's principal business address and the name and address of its agent in this state authorized to receive service of process.
- (3) The business form of the franchisor, whether corporate, partnership, or otherwise.
- (4) The business experience of the franchisor, including the length of time the franchisor has conducted a business of the type to be operated by the franchisee, has granted franchises for such business, and has granted franchises in other lines of business.
- (5) A copy of the typical franchise contract or agreement proposed for use or in use in this state.
- (6) A statement of the franchise fee charged, the proposed application of the proceeds of such fee by the franchisor, and the formula by which the amount of the fee is determined if the fee is not the same in all cases.
- (7) A statement describing any payments or fees other than franchise fees that the franchisee or subfranchisor is required to pay to the franchisor, including royalties and payments or fees that the franchisor collects in whole or in part on behalf of a third party or parties.
- (8) A statement of the conditions under which the franchise agreement may be terminated or renewal refused, or repurchased at the option of the franchisor.
- (9) A statement as to whether, by the terms of the franchise agreement or by other device or practice, the franchisee or subfranchisor is required to purchase from the franchisor or the franchisor's designee services, supplies, products, fixtures or other goods relating to the establishment or operation of the franchise business, together with a description thereof.
- (10) A statement as to whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services offered by the franchisee to customers.
- (11) A statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or the franchisor's agent or affiliate.
- (12) As statement of any past or present practice of any intent of the franchisor to sell, assign, or discount to a third party any note, contract, or other obligation of the franchisee or subfranchisor in whole or in part.

- (13) If any statement of estimated or projected franchisee earnings is used, a statement of such estimation or projection and the data upon which it is based.
- (14) A statement as to whether franchisees or subfranchisors receive an exclusive area or territory; and
- d. In the case of a material modification of an existing franchise, discloses in writing to each franchisee information concerning the specific sections of the franchise agreement proposed to be modified and such additional information as may be required by rule or order of the commissioner. Any agreement by such franchisee to such material modifications is not binding upon the franchisee if the franchisee, within ten business days after the receipt of such writing identifying the material modification, notifies the franchisor in writing that the agreement to such modification is rescinded. A writing identifying the material modification is received when delivered to the franchisee. A written notice by the franchisee rescinding an agreement to a material modification is effective when delivered to the franchisor or when deposited in the mail, postage prepaid, and addressed to the franchisor in accordance with any notice provisions in the franchise agreement, or when delivered or mailed to the person designated in the franchise agreement for the receipt of notices on behalf of the franchisor; and
- e. Has filed with the commissioner a notice of exemption and paid the fee required by section 51-19-17 prior to the offer or sale of a franchise in this state. Any notice of exemption and the renewal must contain the following:

 - (1) The name of the franchisor, the name under which the franchisor is doing or intends to do business, and the name of any parent or affiliated company that will engage in business transactions with franchisees.
 - (2) The franchisor's principal business address and the name and address of its agent in this state authorized to receive service of process.
 - (3) The business form of the franchisor, whether corporate, partnership, or otherwise.
 - (4) A copy of the typical franchise contract or agreement proposed for use or in use in this state.
 - (5) Information sufficient to establish that the franchisor satisfies the exemption conditions contained in subdivisions a and b of subsection 1.

Any notice of exemption remains in effect for a period of one year from the date the notice is received by the commissioner.

SECTION 2. AMENDMENT. Subsection 2 of section 51-19-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2.
 - a. The commissioner shall charge and collect the fees fixed by this section. All fees and charges collected under this section shall be transmitted to the state treasurer and shall be credited to the general fund.
 - b. The fee for filing an application for registration of the sale of franchises is two hundred and fifty dollars.
 - c. The fee for filing an application for renewal of an application is one hundred dollars.
 - d. The fee for filing an amendment to the application is fifty dollars.
 - e. The fee for filing a notice of exemption is one hundred dollars.
 - f. The fee for filing for renewal of a notice of exemption is fifty dollars.
 - g. The expenses reasonably attributable to the investigation or examination of any matter arising under this chapter shall be charged to the applicant or registrant involved, but the expenses so charged shall not exceed such maximum amounts as the commissioner by rule prescribes.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 593

HOUSE BILL NO. 1213
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

COMMODITIES ACT OF 1989

AN ACT to create and enact chapter 51-23 of the North Dakota Century Code, relating to the regulation of certain commodities transactions; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 51-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

51-23-01. Title. This chapter shall be known as the Commodities Act of 1989.

51-23-02. Definitions. When used in this chapter, unless the context or subject matter otherwise requires:

1. "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving any commodity for sale on consignment, whether the person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.
2. "CFTC rule" means any rule, regulation, or order of the commodity futures trading commission in effect on the effective date of this chapter.
3. "Commissioner" means the securities commissioner of this state.
4. "Commodity" means, except as otherwise specified by the commissioner by rule or order, any agricultural, grain, or livestock product or byproduct; any metal or mineral, including a precious metal; any gem or gemstone, whether characterized as precious, semiprecious, or otherwise; any fuel whether liquid, gaseous, or otherwise; any foreign currency; and all other goods, articles, products or items of any kind. The term commodity does not include:
 - a. A numismatic coin with a fair market value at least fifteen percent higher than the value of the metal it contains;
 - b. Real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property; or

- c. Any work of art offered or sold by art dealers, at public auction or offered or sold through a private sale by the owner.
- 5. "Commodity contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity contract offered or sold must, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. A commodity contract may not include any contract or agreement which requires, and under which the purchaser receives within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.
- 6. "Commodity Exchange Act" means the act of Congress known as the Commodity Exchange Act, as amended to the effective date of this chapter.
- 7. "Commodity futures trading commission" means the independent regulatory agency established by Congress to administer the Commodity Exchange Act.
- 8. "Commodity merchant" means any of the following, as defined or described in the Commodity Exchange Act or by CFTC rule:
 - a. Futures commission merchant.
 - b. Commodity pool operator.
 - c. Commodity trading advisor.
 - d. Introducing broker.
 - e. Leverage transaction merchant.
 - f. An associated person of any of the foregoing.
 - g. Floor broker.
 - h. Any other person other than a futures association required to register with the commodity futures trading commission.
- 9. "Commodity option" means any account, agreement, or contract giving a party thereto the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but does not include an option traded on a national securities exchange registered with the United States securities and exchange commission.

10. "Financial institution" means a bank, savings institution, or trust company organized under, or supervised under, the laws of the United States or of any state.
11. "Offer" includes every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option.
12. "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision or a government, but does not include a contract market designated by the commodity futures trading commission or any clearinghouse thereof or a national securities exchange registered with the securities and exchange commission or any employee, officer, or director of such contract market, clearinghouse, or exchange acting solely in that capacity.
13. "Precious metal" means the following in either coin, bullion, or other form: silver, gold, platinum, palladium, copper, and such other items as the commissioner may specify by rule or order.
14. "Sale" or "sell" includes every sale, contract of sale, contract to sell, or disposition, for value.

51-23-03. Unlawful commodity transactions. Except as otherwise provided in section 51-23-04 or 51-23-05, no person may sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option.

51-23-04. Exempt person transactions. The prohibitions in section 51-23-03 do not apply to any transaction offered by and in which any of the following persons or any employee, officer, or director thereof acting solely in that capacity is the purchaser or seller:

1. A person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration.
2. A person registered with the securities and exchange commission as a broker-dealer whose activities require such registration.
3. A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in subsection 1 or 2.
4. A person who is a member of a contract market designated by the commodity futures trading commission or any clearinghouse thereof.
5. A financial institution.
6. A person registered under the laws of this state as a securities dealer whose activities require such registration.
7. A public warehouseman as defined in section 60-02-01.

The exemption provided by this section does not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or CFTC rule.

51-23-05. Exempt transactions.

1. The prohibitions in section 51-23-03 do not apply to the following:

- a. An account, agreement, or transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act.
- b. A commodity contract for the purchase of one or more precious metals which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by such payment, provided that, for purposes of this paragraph, physical delivery must be deemed to have occurred if, within such twenty-eight-day period, such quantity of precious metals purchased by such payment is delivered, whether in specifically segregated or fungible bulk form, into the possession of a depository, other than the seller, which is either:

(1) A financial institution;

(2) A depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission;

(3) A storage facility licensed or regulated by the United States or any agency thereof; or

(4) A depository designated by the commissioner;

and such depository (or other person which itself qualifies as a depository as aforesaid) issues and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser.

c. A commodity contract solely between persons engaged in producing, processing, using commercially or handling as merchants, each commodity subject thereto, or any byproduct thereof.

d. A commodity contract under which the offeree or the purchaser is a person referred to in section 51-23-04 of this chapter, an insurance company, or an investment company as defined in the Investment Company Act of 1940.

2. The commissioner may issue rules or orders prescribing the terms and conditions of all transactions and contracts covered by the provisions of this chapter which are not within the exclusive jurisdiction of the commodity futures trading commission as granted by the Commodity Exchange Act, exempting any person or transaction from any provision of this chapter conditionally or unconditionally and otherwise implementing the provisions of this chapter for the protection of purchasers and sellers of commodities.

51-23-06. Unlawful commodity activities.

1. No person may engage in a trade or business or otherwise act as a commodity merchant unless such person:
 - a. Is registered or temporarily licensed with the commodity futures trading commission for each activity constituting such person as a commodity merchant and such registration or temporary license shall not have expired, nor been suspended nor revoked; or
 - b. Is exempt from such registration by virtue of the Commodity Exchange Act or of a CFTC rule.
2. No board of trade may trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the commodity futures trading commission unless such board of trade has been so designated for such commodity contract or commodity option and such designation has not been vacated, suspended, or revoked.

51-23-07. Fraudulent conduct. No person may, directly or indirectly:

1. Cheat or defraud, or attempt to cheat or defraud, any other person or employ any device, scheme, or artifice to defraud any other person;
2. Make any false report, enter any false record, or make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;
3. Engage in any transaction, act, practice or course of business, including, without limitation, any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person; or
4. Misappropriate or convert the funds, security or property of any other person;

in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into of, any commodity contract or commodity option subject to the provisions of section 51-23-03 or 51-23-04, or subdivision b or d of subsection 1 of section 51-23-05.

51-23-08. Liability of principals, controlling persons, and others.

1. The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office must be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.
2. Every person who directly or indirectly controls another person liable under any provision of this chapter, every partner, officer, or director of such other person, every person occupying a similar status or performing similar functions, and every employee of such other person who materially aids in the violation is also liable jointly and severally with and to the same extent as such other person, unless the person who is also liable by virtue of this provision sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

51-23-09. Securities laws unaffected. Nothing in this chapter impairs, derogates, or otherwise affects the authority or powers of the commissioner under the Securities Act of 1951 or the application of any provision thereof to any person or transaction subject thereto.

51-23-10. Purpose. This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts and to maximize coordination with federal and other states' law and the administration and enforcement thereof. This chapter is not intended to create any rights or remedies upon which actions may be brought by private persons against persons who violate the provisions of this chapter.

51-23-11. Investigations.

1. The commissioner may make investigations, within or without this state, as the commissioner finds necessary or appropriate to:
 - a. Determine whether any person has violated, or is about to violate, any provision of this chapter or any rule or order of the commissioner.
 - b. Aid in enforcement of this chapter.
2. The commissioner may publish information concerning any violation of this chapter or any rule or order of the commissioner.
3. For purposes of any investigation or proceeding under this chapter, the commissioner or any officer or employee designated by rule or order, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner finds to be relevant or material to the inquiry.
4. a. If a person does not give testimony or produce the documents required by the commissioner or a designated employee pursuant to an administrative subpoena, the commissioner or designated

employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony.

b. The request for order of compliance may be addressed to either:

- (1) The district court of Burleigh County, North Dakota, or the district court of any county in this state, where service may be obtained on the person refusing to testify or produce, if the person is within this state; or
- (2) The appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

51-23-12. Enforcement of chapter.

1. If the commissioner believes, whether or not based upon an investigation conducted under section 51-23-11, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the commissioner may:
 - a. Issue a cease and desist order;
 - b. Issue an order imposing a civil penalty in an amount which may not exceed ten thousand dollars for any single violation, or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings; and
 - c. Initiate any of the actions specified in subsection 2 of this section.
2. The commissioner may institute any of the following actions in the appropriate courts of this state, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:
 - a. A declaratory judgment;
 - b. An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or any rule or order of the commissioner;
 - c. An action for disgorgement; and
 - d. An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

51-23-13. Power of court to grant relief.

1. a. Upon a proper showing by the commissioner that a person has violated, or is about to violate, any provision of this chapter or any rule or order of the commissioner, the district court of Burleigh County, North Dakota, may grant appropriate legal or equitable remedies.

- b. Upon showing of violation of this chapter or a rule or order of the commissioner, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:
 - (1) Imposition of a civil penalty in an amount that may not exceed ten thousand dollars for any single violation, or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings;
 - (2) Disgorgement;
 - (3) Declaratory judgment;
 - (4) Restitution to investors wishing restitution; and
 - (5) Appointment of a receiver or conservator for the defendant or the defendant's assets.
- c. Appropriate remedies when the defendant is shown only about to violate this chapter or a rule or order of the commissioner must be limited to:
 - (1) A temporary restraining order;
 - (2) A temporary or permanent injunction;
 - (3) A writ of prohibition or mandamus; and
 - (4) An order appointing a receiver or conservator for the defendant or the defendant's assets.
- 2. The court may not require the commissioner to post a bond in any official action under this chapter.
- 3. a. Upon a proper showing by the commissioner or securities or commodity agency of another state that a person other than a government or governmental agency or instrumentality has violated, or is about to violate, any provision of the commodity code of that state or any rule or order of the administrator or securities or commodity agency of that state, the district court of Burleigh County, North Dakota, may grant appropriate legal and equitable remedies.
- b. Upon showing of a violation of the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state, the court, in addition to traditional legal or equitable remedies including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions and writs of prohibition or mandamus, may grant the following special remedies:
 - (1) Disgorgement; and

- (2) Appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.
- c. Appropriate remedies when the defendant is shown only about to violate the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state must be limited to:
 - (1) A temporary restraining order;
 - (2) A temporary or permanent injunction;
 - (3) A writ of prohibition or mandamus; and
 - (4) An order appointing a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this state.

51-23-14. Criminal penalties.

1. Any person who willfully violates any provision of this chapter, or any rule or order of the commissioner under this chapter, is guilty of a class B felony.
2. Any person convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the person proves he had no knowledge of the rule or order.

51-23-15. Administration of chapter.

1. This chapter must be administered by the securities commissioner.
2. Neither the commissioner nor any employees of the commissioner may use any information which is filed with or obtained by the commissioner which is not public information for personal gain or benefit, nor may the commissioner nor any employees of the commissioner conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate such information.
3.
 - a. Except as provided in subdivision b of subsection 3 of this section, all information collected, assembled, or maintained by the commissioner is public information and is available for the examination of the public.
 - b. The commissioner may, in his discretion, keep confidential information obtained in private investigations pursuant to this chapter and information obtained from federal agencies which may not be disclosed under federal law.
 - c. No provision of this chapter either creates or derogates any privilege which exists at common law, by statute or otherwise when any documentary or other evidence is sought under subpoena directed to the commissioner or any employee of the commissioner.

51-23-16. Cooperation with other agencies.

1. To encourage uniform application and interpretation of this chapter and securities regulation and enforcement in general, the commissioner and the employees of the commissioner may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrator of another jurisdiction, Canadian province or territory or such other agencies administering this chapter, the commodity futures trading commission, the securities and exchange commission, any self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies, and any governmental law enforcement agency.
2. The cooperation authorized by subsection 1 includes, but need not be limited to, the following:
 - a. Making joint examinations or investigations;
 - b. Holding joint administrative hearings;
 - c. Filing and prosecuting joint litigation;
 - d. Sharing and exchanging personnel;
 - e. Sharing and exchanging information and documents;
 - f. Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes, and releases; and
 - g. Issuing and enforcing subpoenas at the request of the agency administering this chapter in another jurisdiction, the securities agency of another jurisdiction, the commodity futures trading commission or the securities and exchange commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state.

51-23-17. General authority to adopt rules, forms, and orders.

1. In addition to specific authority granted elsewhere in this chapter, the commissioner may make, amend, and rescind rules and orders as are necessary to carry out the provisions of this chapter.
2. No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order, or form adopted by the commissioner, notwithstanding that the rule, order, or form may later be amended, or rescinded, or be determined by judicial or other authority to be invalid for any reason.

51-23-18. Consent to service of process. When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order of the commissioner, the engaging in the conduct constitutes the appointment of the commissioner as the person's attorney to receive service of any lawful process in a noncriminal proceeding

against the person, a successor, or personal representative, which grows out of that conduct and which is brought under this chapter or any rule or order of the commissioner with the same force and validity as if served personally.

51-23-19. Scope of this chapter.

1. Sections 51-23-03, 51-23-06, and 51-23-07 apply to persons who sell or offer to sell when an offer to sell is made in this state, or an offer to buy is made and accepted in this state.
2. Sections 51-23-03, 51-23-06, and 51-23-07 apply to persons who buy or offer to buy when an offer to buy is made in this state, or an offer to sell is made and accepted in this state.
3. For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer originates from this state, or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.
4. For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state, and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state, reasonably believing the offeror to be in this state, and it is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance.
5. An offer to sell or to buy is not made in this state when:
 - a. The publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months; or
 - b. A radio or television program originating outside this state is received in this state.

51-23-20. Procedure for entry of an order.

1. The commissioner shall commence an administrative proceeding under this chapter, by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but must be in writing.
2. Upon entry of a notice of intent or summary order, the commissioner shall promptly notify all interested parties that the notice or summary order has been entered and the reasons therefor. If the proceeding is pursuant to a notice of intent, the commissioner

shall inform all interested parties of the date, time, and place set for the hearing on the notice. If the proceeding is pursuant to a summary order, the commissioner shall inform all interested parties that they have thirty business days from the entry of the order to file a written request for a hearing on the matter with the commissioner and that the hearing will be scheduled to commence within thirty business days after the receipt of the written request.

3. If the proceeding is pursuant to a summary order, the commissioner, whether or not a written request for a hearing is received from any interested party, may set the matter down for hearing on the commissioner's own motion.
4. If no hearing is requested and none is ordered by the commissioner, the summary order will automatically become a final order after thirty business days.
5. If a hearing is requested or ordered, the commissioner, after extending notice of an opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.
6. No final order or order after hearing may be returned without:
 - a. Appropriate notice to all interested persons;
 - b. Opportunity for hearing by all interested persons; and
 - c. Entry of written findings of fact and conclusions of law.

Every hearing in an administrative proceeding under this chapter must be public unless the commissioner grants a request joined in by all the respondents that the hearing be conducted privately.

51-23-21. Pleading exemptions. It is not necessary to negative any of the exemptions of this chapter in any complaint, information, or indictment, or any writ or proceeding brought under this chapter; and the burden of proof of any such exemption is upon the party claiming the same.

51-23-22. Affirmative defense. It is a defense in any complaint, information, indictment, or any writ or proceeding brought under this chapter alleging a violation of section 51-23-03 based solely on the failure in an individual case to make physical delivery within the applicable time period under subsection 5 of section 51-23-02 or subdivision b of subsection 1 of section 51-23-05 if:

1. Failure to make physical delivery was due solely to factors beyond the control of the seller, the seller's officers, directors, partners, agents, servants, or employees, every person occupying a similar status or performing similar functions, every person who directly or indirectly controls or is controlled by the seller, or any of them, the sellers affiliates, subsidiaries, or successors; and
2. Physical delivery was completed within a reasonable time under the applicable circumstances.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 1989
Filed April 7, 1989

SOCIAL SECURITY

CHAPTER 594

SENATE BILL NO. 2145
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT COMPENSATION CONTRIBUTIONS

AN ACT to create and enact three new subsections to section 52-04-12 of the North Dakota Century Code, relating to unemployment compensation contribution liens and certificates; and to amend and reenact subsection 2 of section 52-01-01, subsections 2 and 3 of section 52-04-05, subsection 4 of section 52-04-06.1, and sections 52-04-08 and 52-04-11 of the North Dakota Century Code, relating to definition of average annual payroll, determination of rates, incremental bonding of impact projects, and transfers of experience record for unemployment compensation purposes and to penalty and interest on unpaid unemployment compensation contributions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 52-01-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Average annual payroll" means:

- a. The annual payroll for the twelve-month period immediately preceding the computation date for an employer whose account has been chargeable with benefits who has been liable for twelve but less than twenty-four months.
- b. The average of the annual payrolls for the last two 12-month periods immediately preceding the computation date for an employer whose account has been chargeable with benefits who has been liable for twenty-four but less than thirty-six months.
- c. The average of the annual payrolls for the last three 12-month periods immediately preceding the computation date for an employer whose account has been chargeable with benefits who has been liable for thirty-six or more months or more.

SECTION 2. AMENDMENT. Subsections 2 and 3 of section 52-04-05 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. Rates must be determined as follows:

- a. The income required for the calendar year must be divided by the estimated taxable wages for the calendar year. The result

rounded to the next higher one one-hundredth of one percent is the average required rate.

- b. The minimum rate for each calendar year is the average required rate, multiplied by one-fourth, rounded to the nearest one-tenth of one percent.
 - c. The maximum rate for each calendar year is the average required rate, multiplied by ~~two and three-fourths~~ three, rounded to the nearest one-tenth of one percent. However, the maximum rate must be at least five and four-tenths percent.
3. a. Except as otherwise provided in this subsection, an employer's rate may not be reduced below the maximum rate for a calendar year unless the employer's account has been chargeable with benefits throughout the thirty-six-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year.
 - b. If an employer has not been subject to the law as required under subdivision a, that employer qualifies for a reduced rate if the account has been chargeable with benefits throughout the twenty-four-consecutive-calendar-month period ending on September thirtieth of the preceding calendar year.
 - c. An employer that does not qualify under either subdivision a or b is subject to a rate determined as follows:
 - (1) For each calendar year new employers must be assigned a rate of three and one-fourth percent, unless the employer is classified in an industry that the bureau determines has a negative reserve on the computation date. However, an employer must be assigned the maximum rate for any year if, as of the computation date, the cumulative benefits charged to the employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.
 - (2) New employers in industries that have a negative reserve on the computation date and employers that have failed to provide correct industrial classification information must be assigned the maximum rate. However, an employer who becomes subject to the North Dakota Unemployment Compensation Law after December 31, 1989, who is classified in construction services pursuant to subdivision C of the standard industrial classification manual must be assigned a rate of nine percent or the maximum rate, whichever is greater.
 - (3) Assignment by the bureau of an employer's industrial classification for the purposes of this paragraph must be the two digit major group provided in the standard industrial classification manual, in accordance with established classification practices found in the standard industrial classification manual issued by the executive office of the president, office of management and budget.

- d. Regardless of any other provision in this subsection, an employer must be assigned the maximum rate for any year if: as of the computation date, the cumulative benefits charged to the employer's account equal or exceed the cumulative contributions paid on or before October thirty-first with respect to wages paid by that employer before October first of that year.

SECTION 3. AMENDMENT. Subsection 4 of section 52-04-06.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Upon completion of the contract requiring a bond in excess of one thousand two hundred fifty dollars, a contractor may receive a credit of ten percent of the total bond for every ~~ten~~ twenty percent of the total wages which were paid to individuals who at the time of hire were North Dakota residents. Upon completion of the contract requiring a bond of one thousand two hundred fifty dollars or less, a contractor may receive a credit of ten percent of the total bond for every ten percent of the total wages which were paid to individuals who at the time of hire were North Dakota residents. For the purposes of this subsection a person may be considered a resident provided the person has earned in covered employment in North Dakota as defined in title 52, the sum of two thousand dollars during the past four completed calendar quarters preceding the date of employment or can provide evidence of having resided in the state during the past four completed calendar quarters preceding the date of employment.

SECTION 4. AMENDMENT. Section 52-04-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-08. Succession to predecessor's rights, accounts, contributions, benefit experience, and ratings experience record. For the purpose of establishing benefit experience and fixing contributions to be paid, an employing unit which in any manner succeeds to or acquires substantially all of the organization, trade, business, or the assets thereof, of any employing unit shall upon request be substituted to the position and all rights of the predecessor employing unit with respect to such predecessor employing unit's separate account, actual contributions and benefit experience, annual payroll, or otherwise, as if no change with respect to such separate account, contributions, and benefit experience, payrolls or otherwise, had occurred. The bureau upon notification thereof shall forthwith transfer to such succeeding employing unit all rights, accounts, contributions, benefit experience, and all ratings of such predecessor employing unit in accordance with such regulations as the bureau may prescribe; provided, that if the predecessor files a written protest against such transfer within fifteen days of being notified of the successor's application, the transfer will not be made. An employing unit that in any manner acquires all or part of the organization, business, trade, or assets of another employer and continues essentially the same business activity of the whole or part transferred, must upon request be transferred in accordance with such regulations as the bureau may prescribe, the whole or appropriate part of the experience record, reserve balance, and benefit experience of the preceding employer. Provided that if the predecessor files a written protest against such transfer within fifteen days of being notified of the successor's application, the transfer will not be made without opportunity for a hearing.

When an employing unit in any manner acquires all or part of the organization, business, trade, or assets of another employer, the bureau shall transfer all or the appropriate part of the experience record, reserve balance, whether positive or negative, and benefit experience of such predecessor to the successor if it finds that (a) the predecessor was owned or controlled by or owned or controlled the successor directly or indirectly, by legally enforceable means or otherwise or (b) both the predecessor and successor were owned or controlled either directly or indirectly, by legally enforceable means or otherwise, by the same interests.

When a part of an employer's experience record reserve account and benefit experience is to be transferred under this section, the portion of the experience record and reserve account transferred must be in the same ratio to the total experience record and reserve account as the average annual payroll of the transferred organization, trade, business, or assets is to the total average annual payroll of the predecessor.

SECTION 5. AMENDMENT. Section 52-04-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-04-11. Unpaid contributions to bear interest - Penalties for failure to file reports - Penalties and interest collected paid into unemployment compensation fund the federal advance interest repayment fund.

1. Failure of any employing unit subject to the North Dakota Unemployment Compensation Law to file contribution reports and pay contributions in the manner and time prescribed by the bureau shall subject such employing unit to interest and penalty charges as follows:
 - a- Contributions unpaid when due shall bear interest at the rate of one percent per month or fraction thereof from due date.
 - b- In the event of unexcused failure to file contribution reports within sixty days from due date there shall be added a penalty in an amount equal to five percent of such contributions or the sum of ten dollars; whichever is the greater.
 - c- When such unexcused failure to file contribution reports continues for more than sixty days there shall be added an additional penalty in an amount equal to five percent of such contributions for each additional sixty days or fraction thereof; but such additional penalty shall not exceed twenty percent. Contributions unpaid when due must bear interest at the rate of one and one-half percent per month or fraction thereof from due date.
2. The amount added pursuant to the provisions of this section shall be collected at the same time and in the same manner and as a part of the contributions and shall be paid into the federal advance interest repayment fund. Any employer who fails to submit to the bureau any employer's contribution and wage report by the date due shall pay the bureau a penalty equal to five percent of the contributions due for each month or part of a month until the report is submitted. The penalty for the first month may not be less than twenty-five dollars. The penalty for subsequent months may not exceed twenty percent of contributions due. The maximum

penalty imposed by this subsection may not exceed two hundred fifty dollars. The penalty imposed by this subsection may be waived if the bureau determines that the failure to submit the report timely was caused by circumstances beyond the control of the employer.

3. The executive director, or any bureau employee authorized in writing by him, is authorized to enter into written agreements with employers relating to their liability in respect to delinquent contributions, interest, penalties, and costs when such employers are indebted to the bureau because of failure to pay contributions required to be paid within any given period of time; provided, that such agreements shall be in accordance with regulations promulgated by the bureau and filed as provided by law, and further provided that they do not contravene any other law, rule, or regulation.
4. The amount added under this section must be collected at the same time and in the same manner and as a part of the contributions and must be paid into the federal advance interest repayment fund.

SECTION 6. Three new subsections to section 52-04-12 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Whenever any employer, liable to pay contributions, interest, or penalty, fails to pay the same, the amount of contributions, interest, penalty, and costs that may accrue is a lien in favor of the state of North Dakota upon all real or personal property and all rights to property belonging to the employer. The lien attaches at the time the contributions, interest, or penalty becomes due, and continues until the liability is satisfied. To preserve the lien against subsequent mortgages, purchasers for value and without notice of the lien, judgment creditors, and lienholders, job service North Dakota shall file with the register of deeds, in the county in which the property is located, a notice of the lien. The lien is effective from the time of filing of the notice. The register of deeds shall preserve the notice and endorse on it the day, hour, and minute when it was received. The register of deeds shall index the notice of lien in an appropriate index book and record the notice of lien in the manner provided for recording real estate mortgages. The register of deeds shall accept the notice of lien for filing without payment of a fee by job service North Dakota. Upon payment of the contributions, interest, penalty, and costs, job service North Dakota shall file with the register of deeds a satisfaction of the lien. The register of deeds shall enter the satisfaction on the notice of lien, index the satisfaction in an appropriate index book, and record the satisfaction in the manner provided for recording satisfactions of real estate mortgages. The register of deeds shall accept the satisfaction for filing without payment of a fee by job service North Dakota. The attorney general, upon request of job service North Dakota, may bring suit without bond, to foreclose the lien.

Whenever any employer, liable to pay contributions, interest, or penalty, fails to pay the same, job service North Dakota may file a certificate, specifying the amount of contributions, interest, and

penalty due and the name of the liable employer, with the clerk of district court in any county. The clerk shall enter and docket the certificate in the same manner as a judgment that directs the payment of money. The certificate has the force and effect of a judgment of the district court. The certificate is a lien on all the real property, except the homestead, of every person named, which the person may have in any county in which the certificate is docketed at the time of docketing or which the person thereafter acquires in the county, for ten years from the time of docketing. The certificate may be renewed in the same manner and with the same effect as a judgment that directs the payment of money. Execution of the certificate is issuable in the same manner as provided for execution of judgments. Job service North Dakota may proceed by garnishment to enforce the certificate in the same manner as a creditor is entitled to proceed by garnishment to enforce a judgment. Upon payment of the contributions, interest, penalty, and costs, job service North Dakota shall file with the clerk of court a satisfaction of the certificate. The clerk shall discharge the record in the same manner as judgments.

The foregoing remedies are cumulative and no action taken by job service may be construed to be an election to pursue any remedy to the exclusion of any other remedy provided by law.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 595

SENATE BILL NO. 2388
(Heigaard)

UNEMPLOYMENT COMPENSATION BENEFIT YEAR

AN ACT to amend and reenact subsection 6 of section 52-01-01 of the North Dakota Century Code, relating to definition of benefit year for purposes of unemployment compensation benefits; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 52-01-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. "Benefit year" means the fifty-two-week period beginning the first week in which an insured worker first files a request for determination of his insured status and thereafter the fifty-two-week period beginning the first week in which the individual next files such request after the end of his last preceding benefit year. The filing of a notice of unemployment shall be deemed a request for determination of insured status if a current benefit year has not previously been established. In a combined-wage claim, the benefit year shall be that of the paying state. However, if the establishment of a benefit year for a fifty-two-week period under this subsection would result in overlapping any quarter of that base period with the base period of a subsequent valid claim, the benefit year must be fifty-three weeks. A subsequent benefit year cannot be established until the expiration of the current benefit year.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 1989.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 596

SENATE BILL NO. 2115
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

EDUCATIONAL INSTITUTION EMPLOYEE UNEMPLOYMENT

AN ACT to amend and reenact subsection 13 of section 52-01-01 and subsections 9 and 10 of section 52-06-02 of the North Dakota Century Code, relating to the definition of education institutions under the unemployment compensation law and educational employee disqualification from unemployment compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 13 of section 52-01-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

13. "Educational institution" means an educational institution (~~except including an institution of higher education as defined in section 3304(f) of the Federal Unemployment Tax Act [68A Stat. 439; 26 U.S.C. 3301 et seq.]~~) in which participants, trainees, or students are offered an organized course of study or training which may be academic, technical, trade, or preparation for gainful employment in a recognized occupation, designed to transfer to them knowledge, skills, information, doctrines, attitudes, or abilities from, by, or under the guidance of instructors or teachers, and is approved, licensed, or issued a permit to operate as a school by the state department of education or other government agency that is authorized within the state to approve, license, or issue a permit for the operation of a school.

SECTION 2. AMENDMENT. Subsections 9 and 10 of section 52-06-02 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

9. Which are based on service performed in an instructional, research, or principal administrative capacity for any educational institution, for any week of unemployment commencing during the period between two successive academic years, or during a similar period between two regular but not successive terms, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performed such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services in any such capacity for any educational institution in the second of such academic years or terms. This disqualification does not apply to such services performed by an individual who is in the employ of an elementary or secondary school operated by the federal government or ~~any agency of the federal government and who is in a~~

noncontract full-time career position and who is placed in a nonwork and nonpay status for at least two weeks to an individual with respect to services performed in employment other than employment as defined in subdivisions f and g of subsection 17 of section 52-01-01. Except for the provisions of this subsection, benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 shall be payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota Unemployment Compensation Law.

10. Which are based on services performed in any other capacity not described in subsection 9 for any educational institution, for any week which commences during a period between two successive academic years or terms if the individual performed such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms. This disqualification does not apply to such services performed by an individual who is in the employ of an elementary or secondary school operated by the federal government or any agency of the federal government and who is in a noncontract full-time career position and who is placed in a nonwork and nonpay status for at least two weeks to an individual with respect to services performed in employment other than employment as defined in subdivisions f and g of subsection 17 of section 52-01-01. Except for the provisions of this subsection, benefits based on service in employment as defined in subdivisions f and g of subsection 17 of section 52-01-01 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to the North Dakota Unemployment Compensation Law. If compensation is denied to any individual under this subsection and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, that individual is entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this subsection.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 597

SENATE BILL NO. 2353
(Maixner)

UNEMPLOYED BENEFITS AND DEFINITION

AN ACT to amend and reenact subsection 30 of section 52-01-01 and section 52-06-06 of the North Dakota Century Code, relating to the definition of unemployed and the weekly benefit amount earnings reduction for unemployed individuals under the Unemployment Compensation Law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 30 of section 52-01-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30. "Unemployed". An individual is "unemployed" with respect to any week during which he performs no services and with respect to which no wages are payable to him, or with respect to any week ~~of less than full-time work if during which the individual is substantially unemployed and the wages payable to him with respect to such week are less than his weekly benefit amount.~~ For the purposes of this subsection, wages are payable with respect to the weeks for which they were reasonably intended to be payable, irrespective of whether services were performed in those weeks. The bureau shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of ~~short-time~~ work, as the bureau deems necessary.

SECTION 2. AMENDMENT. Section 52-06-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-06. Weekly benefit for unemployment. Each eligible individual who is unemployed with respect to any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of the wages, if any, payable to him with respect to such week which is in excess of ~~one-half~~ sixty percent of his weekly benefit amount. Such benefit, if not a multiple of one dollar, shall be computed to the next higher multiple of one dollar. For the purposes of this section, wages are payable with respect to the weeks for which they were reasonably intended to be payable, irrespective of whether services were performed in those weeks.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 598

SENATE BILL NO. 2117
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT INFORMATION DISCLOSURE

AN ACT to amend and reenact section 52-01-03 of the North Dakota Century Code, relating to disclosure of information obtained pursuant to the administration of the unemployment compensation program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 52-01-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-01-03. Disclosure of information. Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota Unemployment Compensation Law and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or his legal representative shall be supplied with information from the records of the job insurance division, to the extent necessary for the proper presentation of his claim in any proceeding under the North Dakota Unemployment Compensation Law with respect to such claim. Subject to such restrictions as the bureau by regulations may prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon a request, the bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under the North Dakota Unemployment Compensation Law. The bureau may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association, rendered pursuant to the North Dakota Unemployment Compensation Law, and in connection with such request, may transmit any such report or return to the comptroller of the currency of the United States as provided in subsection c of section 3305 of the federal Internal Revenue Code. The bureau shall request and exchange information for purposes of income and eligibility verification to meet the requirements of section 1137 of the Social Security Act.

The bureau may provide the workers compensation bureau, the state labor commissioner, the state economic development commission, and the state tax

* NOTE: Section 52-01-03 was also amended by section 2 of Senate Bill No. 2367, chapter 509.

commissioner with information obtained pursuant to the administration of the North Dakota Unemployment Compensation Law. Any information so provided must be used only for the purpose of administering the duties of the workers compensation bureau, the state labor commissioner, the state economic development commission, and the state tax commissioner.

The bureau shall request and exchange information as required of the bureau under federal law with any specified governmental agencies. Any information so provided may be used only for the purpose of administering the duties of such governmental agencies.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 599

SENATE BILL NO. 2361
(Senators Richard, Nalewaja)
(Representative Hoffner)

ADULT EDUCATION AND TRAINING GRANTS

AN ACT to establish a grant program for students enrolled in adult education and training programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Adult education and training - Grants to students. Job service North Dakota may make grants of up to five hundred dollars per person to Job Training Partnership Act eligible students enrolled in adult basic and secondary education programs and training programs for adults approved by job service North Dakota. No grants may be made unless federal funds received by the state for job training services as defined in the Job Training Partnership Act [Pub. L. 97-300; 96 Stat. 1361; 29 U.S.C. 1604] have been obligated. Job service may collect an administrative fee not to exceed ten percent of the amount of grants made under this section. Job service North Dakota shall, in cooperation with the superintendent of public instruction, the department of vocational education, and any other state agency providing or administering adult education services, coordinate the grant program established under this section. Job service North Dakota shall adopt rules to implement the grant program established under this section including rules regarding eligibility requirements and use of grant proceeds.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 600

SENATE BILL NO. 2032
(Legislative Council)
(Interim Budget Committee on Government Administration)

JOB SERVICE LOCAL ADVISORY COUNCILS

AN ACT to amend and reenact section 52-02-07 of the North Dakota Century Code, relating to the appointment of state and local advisory councils by the job service North Dakota bureau.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-02-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-02-07. State and local advisory councils appointed by bureau - Composition - Duties - Compensation. The bureau shall appoint a state advisory council and may appoint local advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may be regarded fairly as representative because of their vocation, employment, or affiliations, and of such members representing the general public as the bureau may designate. Such councils shall aid the bureau in formulating policies, and discussing problems related to the administration of the bureau and in assuring impartiality and freedom from political influence in the solution of such problems. Such ~~The~~ state ~~advisory councils~~ council shall be reimbursed for any necessary expenses but shall serve without further compensation except such as may be authorized and fixed by the bureau by regulation. Local advisory councils may be reimbursed for any necessary expenses but must serve without further compensation.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 601

SENATE BILL NO. 2123
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT RESERVE FUND MINIMUM

AN ACT to amend and reenact subsection 1 of section 52-04-05 of the North Dakota Century Code, relating to unemployment compensation fund minimum reserve.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 52-04-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. For each calendar year, the bureau shall estimate the amount of income needed to pay benefits and maintain a balance in the unemployment compensation fund, that as of October 1, 1989, ~~and each succeeding October first,~~ is equal to twenty-five percent of the ~~total~~ average annual amount of benefits paid ~~during the previous twelve months.~~ On each October first after October 1, 1989, the amount of the trust fund reserve shall be sixty percent of the average annual amount of benefits paid. The average annual amount of benefits paid must be computed by dividing the total amount of benefits paid and projected to be paid during the previous thirty-six months by three.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 602

SENATE BILL NO. 2118
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT EMPLOYER RATING CONTINUATION

AN ACT to create and enact a new subsection to section 52-04-05 of the North Dakota Century Code, relating to determination of rates for unemployment compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 52-04-05 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

An employer who has ceased to be liable for contributions shall continue its established experience rating account if it again becomes liable within three years from the date that it ceased to be liable. Such employer's rate, however, must be determined in accordance with subsection 3 of this section.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 603

SENATE BILL NO. 2122
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

UNEMPLOYMENT NONCHARGING, QUALIFYING, AND OVERPAYMENTS

AN ACT to amend and reenact subsection 2 of section 52-04-07, subsection 2 of section 52-06-04, and section 52-06-33 of the North Dakota Century Code, relating to noncharging of unemployment compensation benefits, qualifying as an insured worker for unemployment compensation purposes, and unemployment compensation overpayments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 52-04-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Notwithstanding subsection 1, an employer's account shall not be charged for any of the following:
 - a. With benefits paid to an individual for unemployment that is directly caused by a major natural disaster declared by the president pursuant to section 102(2) of the Disaster Relief Act of 1974 [Pub. L. 93-288; 88 Stat. 143; 42 U.S.C. 5122(2)], if the individual would have been eligible for disaster unemployment assistance with respect to that unemployment but for the individual's receipt of unemployment insurance benefits.
 - b. With benefits paid to an individual who left the employment of the employer voluntarily without good cause or with good cause not involving fault on the part of the employer or who was discharged from employment by the employer for misconduct.
 - c. As provided under section 52-06-29.
 - d. With benefits paid to an individual who is in training with the approval of the bureau.

SECTION 2. AMENDMENT. Subsection 2 of section 52-06-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. To qualify as an insured worker an individual must have been paid wages for insured work in at least two calendar quarters of the individual's base period totaling not less than one and one-half times the individual's total wages paid during the quarter of the individual's base period in which the individual's wages were the highest. However, the wage credits of an individual earned during the period commencing with the end of the prior base period and

ending on the date on which the individual filed a valid claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has subsequently earned wages for insured work in an amount equal to at least ten times the individual's current weekly benefit amount. Base period wages used to determine an individual's monetary eligibility under this subsection, as a result of the following employment, shall not exceed ten times the individual's weekly benefit amount:

- a. Employment by a partnership, if one-fourth or greater ownership interest in the partnership is or during such employment was owned or controlled, directly or indirectly by the individual's spouse or child, or by the individual's parent if the individual is under age eighteen, or by a combination of two or more of them.
- b. Employment by a corporation, if one-fourth or more of the ownership interest, however designated or evidenced in the corporation is or during such employment was owned or controlled, directly or indirectly, by the individual or by the individual's spouse or child, or by the individual's parent if the individual is under age eighteen, or by a combination of two or more of them.
- c. This provision does not apply if, at the time of the claim, such ownership interest has been ceded.

SECTION 3. AMENDMENT. Section 52-06-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-33. Recovery and recoupment. A person who has received any amount of benefits under the North Dakota Unemployment Compensation Law to which he is not entitled shall be liable to refund to the bureau for the fund the amount so paid, or to have such amount deducted from any future benefits payable to him under the North Dakota Unemployment Compensation Law or the unemployment compensation law of another state or the federal government following a finding that such payment occurred. Such findings shall have become final and shall specify the reason for such finding, the week or weeks for which such benefits were paid, and the amount of benefits so paid. The bureau, in its discretion, may release such person from liability to refund when it finds that recovery would be contrary to equity and good conscience. Amounts determined collectible ~~shall be free of interest and~~ may be so collected by civil action in the name of the bureau. Amounts unpaid on the date on which they are due and payable, as determined by the bureau may bear interest at the rate of one and one-half percent per month from and after that date until payment plus accrued interest is received by the bureau. However, no interest may be assessed for the first one hundred and eighty days on any overpayment occurring without fault on the part of the individual.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 604

SENATE BILL NO. 2121
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

CORPORATE OFFICER UNEMPLOYMENT CONTRIBUTION LIABILITY

AN ACT to create and enact a new section to chapter 52-04 of the North Dakota Century Code, relating to personal liability of corporate officers for unemployment compensation purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 52-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Corporate officer personal liability.

1. Any officer, director, or any employee having twenty percent ownership interest of a corporation that is an employer under the North Dakota Unemployment Compensation Law who has control of or supervision over the filing of and responsibility for filing contribution reports or making payment of contributions under the North Dakota Unemployment Compensation Laws, and who willfully fails to file the reports or to make payments as required, is personally liable for contributions or reimbursement, including interest, penalties, and costs in the event the corporation does not pay to the bureau those amounts for which the employer is liable.
2. The personal liability of any person as provided herein shall survive dissolution, reorganization, bankruptcy, receivership, or assignment for the benefit of creditors. For the purposes of this section, all wages paid by the corporation must be considered earned from the person determined to be personally liable.
3. After notice and opportunity for a hearing the unemployment compensation division shall make a determination as to the personal liability under this section. A hearing must be requested within twelve days from the date of mailing of the notice. The determination is final unless the person found to be personally liable requests review by the bureau within fifteen days after mailing of the notice of determination to the person's last known address.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 605

HOUSE BILL NO. 1603
(Representatives Frey, Haugland, Oban)
(Senators Yockim, Keller)

UNEMPLOYMENT DISQUALIFICATION TRAVEL CONSIDERATIONS

AN ACT to amend and reenact subsection 1 of section 52-06-02 of the North Dakota Century Code, relating to disqualification from unemployment compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 52-06-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. For the week in which he has left his most recent employment voluntarily without good cause attributable to the employer, and thereafter until such time as he:
 - a. Can demonstrate that he has earned remuneration for personal services in employment equivalent to at least eight times his weekly benefit amount as determined under section 52-06-04; and
 - b. Has not left his most recent employment under disqualifying circumstances.

This subsection does not apply if the bureau determines that the individual in an active claim filing status accepted work which the individual could have refused with good cause under section 52-06-36 and terminated such employment with the same good cause and within the first ten weeks after starting work.

This subsection does not apply if the individual left employment or remains away from employment following illness or injury upon a physician's written notice or order; no benefits may be paid under this exception unless the employee has notified the employer of the physician's requirement and has offered service for suitable work to the employer upon the individual's capability of returning to employment. This exception shall not apply unless the individual's capability of returning to employment and offer of service for suitable work to the employer occurs within sixty days of the last day of work. However, the cost of any benefits paid under this exception shall not be charged against the account of the employer from whom the individual became separated as a result of the illness or injury. The bureau may request and designate a licensed physician to provide a second opinion regarding the claimant's qualification; however, no individual shall be charged fees of any kind for the cost of such second opinion.

This subsection shall not apply if the individual left the most recent employment because of an injury or illness caused or aggravated by the employment; no benefits may be paid under this exception unless the individual leaves employment upon a physician's written notice or order, the individual has notified the employer of the physician's requirement, and there is no reasonable alternative but to leave employment.

For the purpose of this subsection, an individual who left the most recent employment in anticipation of discharge or layoff, must be deemed to have left employment voluntarily and without good cause attributable to the employer.

For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and voluntarily quit without good cause attributable to the employer or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding eight times his weekly benefit amount.

This subsection does not apply if the individual leaves work which is two hundred road miles [321.87 kilometers] or more, as measured on a one-way basis, from the individual's home to accept work which is less than two hundred road miles [321.87 kilometers] from the individual's home provided the work is a bona fide job offer with a reasonable expectation of continued employment.

Approved April 3, 1989
Filed April 3, 1989

CHAPTER 606

HOUSE BILL NO. 1515
(Representatives Scherber, Graba, R. Larson)
(Senators Krauter, Schoenwald)

STUDENTS UNDER UNEMPLOYMENT

AN ACT to amend and reenact subsection 6 of section 52-06-02 of the North Dakota Century Code, relating to student disqualification from unemployment compensation benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 52-06-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. For any week of unemployment if such individual is a student registered for full attendance at and is regularly attending an established school, college, or university, except as provided in subdivision a of subsection 3 of section 52-06-01. However, this disqualification does not apply to full-time postsecondary students who have earned the majority of their wage credits in their base period for services performed during weeks in which the individual was attending school as a full-time postsecondary student.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 607

SENATE BILL NO. 2119
(Committee on Judiciary)
(At the request of Job Service North Dakota)

UNEMPLOYMENT SUBPOENA PENALTY

AN ACT to amend and reenact section 52-06-23 of the North Dakota Century Code, relating to subpoenas for unemployment compensation purposes; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-06-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-06-23. Administering oaths - Taking depositions - Compelling attendance of witnesses and memoranda - Penalty. In the discharge of the duties imposed by the North Dakota Unemployment Compensation Law, the chairman of an appeal tribunal, or any duly authorized representative or member of the bureau, may administer oaths and affirmations, take depositions, certify to official acts, and issue a subpoena to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of the North Dakota Unemployment Compensation Law. Any person who willfully fails to obey a subpoena issued under this section, unless good cause for failure to obey is shown, is guilty of a class B misdemeanor.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 608

HOUSE BILL NO. 1118
(Committee on Industry, Business and Labor)
(At the request of Job Service North Dakota)

OASIS ASSESSMENTS AND BENEFITS

AN ACT to amend and reenact section 52-09-09 and subsection 9 of section 52-09-20 of the North Dakota Century Code, relating to rates of contributions and primary insurance benefits under the old-age and survivor insurance system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-09-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

52-09-09. Rate of contribution. In addition to all other taxes there is hereby levied upon each employer, as defined in section 52-09-20, and also upon each employee, as defined in section 52-09-20, a tax, equal to one per centum of the wages paid before July 1, 1955, and two per centum of the wages paid after June 1955, up to July 1, 1957, to be paid by each employer and each employee. The above tax imposed by this chapter shall be collected by the employer from the employee by deducting the amount of the tax from the wages as and when paid. From and after July 1, 1957, and until July 1, 1959, the tax upon each employer shall be equal to four percent of the wages paid to each employee, and after June 30, 1959, up to July 1, 1961, such tax shall be equal to three and one-half percent, and after June 30, 1961, and until July 1, 1963, such tax shall be equal to three percent, and after June 30, 1963, such tax shall be equal to two percent, and after December 31, 1965, such tax shall be equal to one percent. After June 30, 1957, there shall be no tax hereunder upon the employee. Provided, however, if on the first day of October in any year the accumulated contributions under this chapter equal or exceed an amount one and one-half times the sum of the benefit payments and costs of administration of this chapter and chapter 52-10 for the twelve months ending on September thirtieth of that year, the tax shall be suspended during the succeeding year, and until such year in which, on the first day of October of the previous year, the accumulated contributions are less than one and one-half times the sum of the benefit payments and costs of administration of this chapter and chapter 52-10 for the twelve months ending on September thirtieth of that year. However, for the calendar year 1989 the tax on each employer may be imposed only on wages paid through June 30, 1989.

SECTION 2. AMENDMENT. Subsection 9 of section 52-09-20 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Primary insurance benefit" means the sum of the following:

- a. (1) Fifty percent of the amount of an individual's average monthly wage if the average monthly wage does not exceed seventy-five dollars; or
- (2) If the average monthly wage exceeds seventy-five dollars, thirty-seven dollars and fifty cents, plus fifteen percent of the amount by which the average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars;
- b. One percent of the amount computed under subdivision a, multiplied by the number of years in which two hundred dollars or more of wages were paid to the individual; and
- c. (1) Effective July 1, ~~1987~~ 1989, two hundred ~~twenty~~ sixty dollars; or
- (2) Effective July 1, ~~1988~~ 1990, two hundred ~~forty~~ eighty dollars.

Approved March 9, 1989
Filed March 9, 1989

SPORTS AND AMUSEMENTS

CHAPTER 609

SENATE BILL NO. 2184
(Committee on State and Federal Government)
(At the request of the Secretary of State)

CHARITABLE ORGANIZATION BOXING EXHIBITIONS

AN ACT to amend and reenact section 53-01-07 of the North Dakota Century Code, relating to the duties of the state athletic commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-01-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-01-07. Duties of state athletic commissioner. The secretary of state shall have charge and supervision of all boxing or sparring exhibitions held in the state and may:

1. Make rules governing the conduct of boxing or sparring exhibitions.
2. Issue licenses to individuals or organizations desiring to promote or conduct such exhibitions and suspend or revoke such licenses at pleasure.

The provisions of ~~this chapter~~ subsection 2 do not apply to any boxing or sparring exhibitions the net proceeds of which are to be devoted to charitable purposes. Charitable organizations conducting boxing and sparring exhibitions shall submit documents to the secretary of state providing proof of their nonprofit corporate status, shall submit a notification of contest naming contestants and other ring officials, and shall submit a final report showing the boxing exhibition results.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 610

HOUSE BILL NO. 1673

(Sorensen)

(Approved by the Committee on Delayed Bills)

SUNDAY BOXING

AN ACT to amend and reenact section 53-01-13 of the North Dakota Century Code, relating to boxing or sparring exhibitions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-01-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-01-13. Restrictions on licensee. No person or organization with a license to promote or conduct boxing or sparring exhibitions may engage directly or indirectly in the managing of any boxer. No boxing or sparring exhibition may ~~be held on Sunday; nor may any such exhibition~~ have a duration of more than fifteen rounds of three minutes each.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 1989

Filed April 7, 1989

CHAPTER 611

HOUSE BILL NO. 1473
(Representatives Oban, Dalrymple, W. Williams)
(Senator Robinson)

AMUSEMENT RIDES

AN ACT to regulate the operation of amusement rides; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definition. As used in this Act, "amusement ride" means any mechanical device that carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement. The term does not include:

1. A single-passenger, coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator.
2. Nonmechanized playground equipment, including swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, and physical fitness devices.

SECTION 2. Affidavit of inspection and insurance. No person may operate an amusement ride unless that person has filed with the governing body of the city or county where that person is intending to operate the amusement ride an affidavit that the ride has been inspected by a qualified inspector of an insurance underwriter and that the owner or operator has a current insurance policy in force written by an insurance company authorized to do business in this state. The policy must insure the owner or operator against liability for injury to persons arising out of the use of the amusement ride in an amount of not less than five hundred thousand dollars per occurrence or an aggregate of not less than one million dollars.

SECTION 3. Records required. The owner or operator of an amusement ride shall retain at all times up-to-date maintenance and inspection records for the amusement ride and, upon request, provide those records to the governing body of the city or county in which the person is intending to operate the amusement ride. In addition, the owner or operator of an amusement ride shall provide to the governing body of the city or county a copy of any report of an accident related to an amusement ride submitted by that person to an insurer within the last year.

SECTION 4. Operator - Requirements. A person may not operate an amusement ride unless that person is at least sixteen years of age. An

operator must be in attendance at all times that an amusement ride is in operation.

SECTION 5. Penalty - Injunction. A person who violates this Act is guilty of a class A misdemeanor. The governing body of a city or county may seek an injunction against a person operating an amusement ride in violation of this Act.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 612

SENATE BILL NO. 2220
(Committee on Political Subdivisions)
(At the request of the Attorney General)

REGULATION OF GAMES OF CHANCE

AN ACT to create and enact a new subsection to section 53-06.1-15.1 and a new section to chapter 53-06.1 of the North Dakota Century Code, to allow the attorney general to enter into an agreement to exchange information with the internal revenue service; and to amend and reenact subsections 1, 3, and 7 of section 53-06.1-01, section 53-06.1-02, subdivision b of subsection 2 of section 53-06.1-03, sections 53-06.1-03.1, 53-06.1-03.2, 53-06.1-03.3, 53-06.1-04, 53-06.1-05, subsections 2 and 8 of section 53-06.1-06, sections 53-06.1-07, 53-06.1-07.1, 53-06.1-08, 53-06.1-08.1, 53-06.1-10, subsection 2 of section 53-06.1-14, subsections 3 and 4 of section 53-06.1-15.1, and section 53-06.1-16.2 of the North Dakota Century Code, relating to definitions, use of gaming funds to promote initiatives and referendums, the use of funds, rent for bingo sites, charitable gaming tickets, sports pools, lending gaming equipment, twenty-one players playing two hands, the attorney general seizing gaming materials without a court order, and sales by distributors and manufacturers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1, 3, and 7 of section 53-06.1-01 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. "Adjusted gross proceeds" means, except in the case of the games of draw poker and stud poker authorized under section 53-06.1-07.2, gross proceeds less cash prizes or the price of merchandise prizes. In the games of draw poker and stud poker, "adjusted gross proceeds" means the share of the pot retained time buy-ins or tournament fees collected by the eligible organization.
3. "Charitable gaming ticket" means the game piece used in pull tab games or jar ticket games.
7. "Educational, charitable, patriotic, fraternal, religious, or other public-spirited uses" are:
 - a. To the extent used for purposes enumerated in subdivisions c through j, uses benefiting those organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code.
 - b. To the extent used for purposes enumerated in subdivisions c through j, uses benefiting an organization registered with the North Dakota secretary of state under chapter 50-22.

- c. Uses benefiting an indefinite number of persons either by bringing them under the influence of education, cultural programs, or religion or relieving them of disease, suffering, or constraint.
- d. Fraternal uses specified by an organization's constitution, charter, or bylaws not of direct benefit to the eligible organization or any member thereof.
- e. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, not of direct benefit to the eligible organization or any member thereof.
- f. The erection or maintenance of public buildings or works.
- g. Uses otherwise lessening the burden of government.
- h. Uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the losses uncompensated by insurance.
- i. Uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is uncompensated by insurance.
- j. Uses, for community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies as a community service project if it promotes the common good, enhances the social welfare of the community, and benefits an indefinite number of persons. The specific goals of a community service project may be to develop or promote public services in areas such as education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, and health. Uses that directly benefit a chamber of commerce do not qualify.

Such uses do not include the erection, acquisition, improvement, maintenance, or repair of real, personal, or mixed property unless it is used exclusively for one or more of the stated uses. Uses shall not include any activities consisting of attempts to influence legislation, promote or oppose referendums or initiatives, or participation in any political campaign on behalf of any active official or person who is or has been a candidate for public office.

SECTION 2. AMENDMENT. Section 53-06.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-02. Organizations eligible under chapter - Use of net proceeds. Nonprofit veterans, charitable, educational, religious, and fraternal organizations, civic and service clubs, and public-spirited organizations, as those terms are defined by this chapter, are eligible to conduct games of chance under the conditions of this chapter. The entire net proceeds of such games of chance are to be devoted to educational,

charitable, patriotic, fraternal, religious, or other public-spirited uses as defined by this chapter. Notwithstanding any other provision of this chapter, an eligible organization, which is not required to be licensed by the attorney general, may use the net proceeds of such games of chance to directly benefit the eligible organization; ~~however, none of the proceeds may be used for capital improvements or the purchase of furnishings. For purposes of this section, a capital improvement is defined as the construction, renovation, remodeling, or repair of a building which tends to enhance its value, beauty, or utility or to adapt it for further purposes. For purposes of this section, a furnishing is defined as furniture, draperies, or equipment.~~

* SECTION 3. AMENDMENT. Subdivision b of subsection 2 of section 53-06.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- b. A class B license to any other eligible organization. The attorney general may deny a class B license to an otherwise eligible organization if the organization is connected, directly or indirectly, to the holder of a North Dakota retail alcoholic beverage license. An eligible organization that qualifies for a class A license may not also be issued a class B license.

SECTION 4. AMENDMENT. Section 53-06.1-03.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-03.1. Bingo sites - ~~No limit on rent~~ Rent must be reasonable. For all purposes associated with the privilege of conducting games of chance, ~~there is no limit on the monthly rent~~ at a site where bingo is the primary game of chance conducted, the monthly rent must be reasonable.

SECTION 5. AMENDMENT. Section 53-06.1-03.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-03.2. Twenty-one sites - Limit on rent. For all purposes associated with the privilege of conducting games of chance at a site other than ~~one~~ a site where bingo is the primary game of chance ~~being~~ conducted, but where the game of twenty-one is conducted, the monthly rent may not exceed one hundred fifty dollars multiplied by the number of tables on which the game of twenty-one is conducted.

SECTION 6. AMENDMENT. Section 53-06.1-03.3 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-03.3. ~~Games of chance~~ Charitable gaming ticket sites - Limit on rent. For all purposes associated with the privilege of conducting games of chance at a site other than ~~one~~ a site where bingo is the primary game of chance ~~being~~ conducted, the monthly rent may not exceed:

1. If the game of twenty-one is conducted on the site, in addition to the rent allowable for the game of twenty-one, fifty dollars.

* NOTE: Section 53-06.1-03 was also amended by section 1 of House Bill No. 1185, chapter 615; section 1 of House Bill No. 1210, chapter 618; section 1 of House Bill No. 1239, chapter 617; section 1 of Senate Bill No. 2294, chapter 619; and section 1 of Senate Bill No. 2482, chapter 616.

2. If the game of twenty-one is not conducted on the site, one hundred fifty dollars.

SECTION 7. AMENDMENT. Section 53-06.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-04. College fraternities and sororities allowed to conduct raffles, sports pools, and bingo - Use of proceeds. A college fraternity or sorority recognized by the administration of a North Dakota college or university shall be eligible to conduct raffles, sports pools, and bingo under the provisions of this chapter. The entire net proceeds of such raffles, sports pools, and bingo shall be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses as defined by this chapter.

* SECTION 8. AMENDMENT. Section 53-06.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-05. Local approval for educational organizations, college fraternities, and sororities for raffles, sports pools, and bingo. An educational organization, college fraternity, or sorority shall apply in writing to the governing body of the city in which it is located, or to the board of county commissioners if the educational organization or the college is located outside the geographical limits of a city, for permission to conduct raffles, sports pools, or bingo at least thirty days prior to each occasion. The application shall state the time, place, and educational, charitable, patriotic, fraternal, religious, or other public-spirited uses to which the proceeds will be devoted. An applicant fraternity or sorority shall include a signed acknowledgment by the administration of the college or university that the applicant is a recognized fraternity or sorority. The governing body may at its own discretion, and upon application, grant permission for raffles, sports pools, and bingo to be held at specifically designated times and places for specific uses covering a one-year period. The governing body may by ordinance or resolution establish authorization fees not to exceed ten dollars for an authorization for one occasion and not to exceed twenty-five dollars for an authorization covering more than one occasion. If the governing body, at its own discretion, chooses to authorize raffles, sports pools, or bingo pursuant to this chapter, the governing body may do so by resolution.

SECTION 9. AMENDMENT. Subsections 2 and 8 of section 53-06.1-06 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. ~~No~~ Except when authorized by the attorney general, no games of chance may be conducted with any gaming equipment other than gaming equipment owned by an eligible organization or rented at a reasonable rate by an eligible organization from a licensed distributor.
8. ~~Only~~ Except at the temporary alternate site provided by subdivision a of subsection 3 of section 53-06.1-03, only the members of an organization licensed as a class A licensee by the attorney general under this chapter and their spouses and bona fide

* NOTE: Section 53-06.1-05 was also amended by section 8 of Senate Bill No. 2220, chapter 615.

guests may participate in playing games of chance conducted by such licensed organization.

* SECTION 10. AMENDMENT. Section 53-06.1-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-07. Games of chance allowed. Eligible organizations shall be permitted to conduct the following games of chance:

1. Eligible organizations licensed by the attorney general shall be permitted to conduct bingo, raffles, ~~pull tabs, jars~~ charitable gaming tickets, punchboards, twenty-one, and sports pools for professional sports only.
2. College fraternities or sororities may conduct raffles, sports pools, and bingo.
3. Draw poker and stud poker in accordance with section 53-06.1-07.2.

** SECTION 11. AMENDMENT. Section 53-06.1-07.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-07.1. Limitations on hours and participation in games of chance. A person under twenty-one years of age may not participate in the games of ~~pull tabs, jars~~ charitable gaming tickets, punchboards, twenty-one, ~~or sports pools, or poker.~~ The games of ~~pull tabs, jars~~ charitable gaming tickets, punchboards, twenty-one, or sports pools may be conducted only during the hours when alcoholic beverages may be dispensed in accordance with applicable regulations of the state or the political subdivision.

SECTION 12. AMENDMENT. Section 53-06.1-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-08. Punchboards and ~~jars~~ charitable gaming tickets - Sale of chances - Maximum price per ticket. Unless all of the highest denomination of winners have been sold, or unless otherwise permitted by the attorney general, a person or organization engaged in the selling of chances from ~~jars~~ games of charitable gaming tickets or punchboards under this chapter may not discard the chances from any ~~jar~~ game of charitable gaming ticket or punchboard once the contents of that ~~jar~~ game of charitable gaming ticket or punchboard are offered for sale to eligible participants. The maximum price per charitable gaming ticket may not exceed two dollars.

SECTION 13. AMENDMENT. Section 53-06.1-08.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-08.1. Limitation on ~~pull tab and jar~~ charitable gaming ticket prizes. An eligible organization may not conduct a ~~pull tab or jar~~ game of charitable gaming tickets in which the highest denomination winner exceeds five hundred dollars.

* NOTE: Section 53-06.1-07 was also amended by section 4 of House Bill No. 1641, chapter 613, and section 1 of House Bill No. 1292, chapter 620.

** NOTE: Section 53-06.1-07.1 was also amended by section 1 of Senate Bill No. 2440, chapter 621; section 5 of House Bill No. 1641, chapter 613; and section 2 of House Bill No. 1292, chapter 620.

* SECTION 14. AMENDMENT. Section 53-06.1-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-10. Twenty-one - Sale of chips - Redemption - Wager - Limit - Rules of play. Any licensee or other eligible organization may conduct and control the playing of the card game twenty-one on the licensee's or eligible organization's premises or authorized site, but at no other location. No money may be allowed on the table. The licensee or eligible organization shall provide playing chips of various denominations to the participants. Chips shall be redeemed by the licensee or eligible organization for their full value. The maximum limit per wager is two dollars. A wager of one dollar must be accepted. A player may not play more than two hands at the same time, and no player may play two hands unless another position is open at the table and no other player wishes to play at that position. Only the player actually playing a hand may place a wager on any hand. Twenty-one is a card game played by a maximum of seven players and one dealer. The dealer shall be a representative of the eligible organization sponsoring the game of chance. All players play their hand against the dealer's hand. In order to remain in the hand being dealt, neither the player nor the dealer may play a hand with a count greater than twenty-one. A count of twenty-one obtained with two cards is termed a natural twenty-one and is an automatic pay out except in case of a tie count with the dealer. Players may double down on a natural twenty-one. In the case of matching or tie count between the player and the dealer no winner is declared and both persons keep their the player keeps the player's wager. Each licensee or eligible organization conducting twenty-one shall post rules relating to the conduct of the game in a conspicuous location near where the game is played.

** SECTION 15. AMENDMENT. Subsection 2 of section 53-06.1-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Every nonresident manufacturer or distributor of bingo paper or supplies doing business in this state shall appoint a North Dakota agent who is licensed as a distributor. No distributor may sell, market, or otherwise distribute raffle tickets or equipment for games of chance except to eligible other licensed distributors, licensed organizations, or organizations that have been issued a local permit. A manufacturer of charitable gaming tickets or paper bingo cards may not sell, market, or otherwise distribute charitable gaming tickets or paper bingo cards, other than to a licensed distributor. A distributor of charitable gaming tickets or paper bingo cards must purchase or otherwise receive charitable gaming tickets or paper bingo cards only from a licensed manufacturer or other licensed distributor.

SECTION 16. AMENDMENT. Subsections 3 and 4 of section 53-06.1-15.1 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. Seize and remove from such premises and impound any gaming related equipment or, supplies, games of chance, or books and records for the purpose of examination and inspection pursuant to an appropriate court order. When books or records are seized, the attorney general shall provide copies of those records or books

* NOTE: Section 53-06.1-10 was also amended by section 1 of House Bill No. 1249, chapter 622.

** NOTE: Section 53-06.1-14 was also amended by section 2 of House Bill No. 1210, chapter 618; section 7 of House Bill No. 1641, chapter 613; and section 7 of Senate Bill No. 2455, chapter 170.

within twenty-four hours of a specific request by the organization for a copy of the books or records seized.

4. Demand access to and inspect, examine, photocopy, and audit all books and records of applicants, licensees, lessors, manufacturers, and distributors, including any affiliated companies on their premises and in the presence of the licensees, lessors, manufacturers, distributors, or agents concerning the gross any income produced by or expense resulting from any gaming business, and require verification of income or expense, and all other matters affecting the enforcement of the policy and provisions of this chapter.

SECTION 17. A new subsection to section 53-06.1-15.1 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Enter into a reciprocal agreement with the commissioner of the internal revenue service of the United States for exchange of information for state tax administration purposes.

SECTION 18. A new section to chapter 53-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exchange and secrecy of information regarding the internal revenue service.

1. The attorney general may permit the commissioner or proper representative of the internal revenue service of the United States to inspect the gaming tax returns of any eligible organization, or may furnish a copy of the tax return of any organization, or furnish information concerning any item contained in any tax return, or disclosed by the report of any audit or investigation of the gaming activity of any organization or player, or recordkeeping information required by this chapter and the rules adopted under this chapter, but permission may be granted, or such information furnished to the commissioner or proper representative only if the statutes of the United States grant substantially similar privileges to the attorney general, including providing the attorney general with a copy of the income tax return of any taxpayer and furnishing information concerning any item contained in any tax return, or disclosed by the report of any audit or investigation of the income and expenses of any taxpayer. Provided, that similar information furnished or made available to the attorney general by the commissioner or proper representative of the internal revenue service shall be used by the attorney general for state tax administration purposes. However, such information may not be disclosed to the extent that the attorney general determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal investigation.
2. Except when otherwise directed by judicial order, or for pursuing civil or criminal charges regarding a violation of any provision of this chapter or any rule adopted under this chapter, or as is otherwise provided by law, the attorney general, agents, and employees, may not divulge nor make known, in any manner, to any

person, the amount of income, or any item contained in any income tax return, or disclosed by the report of any audit or investigation of the income and expenses of any taxpayer, as provided to the attorney general by the internal revenue service. This provision may not be construed to prohibit the publication of statistics, so classified as to prevent the identification of particular reports or returns, and the items thereof.

SECTION 19. AMENDMENT. Section 53-06.1-16.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-16.2. License suspension or revocation by attorney general - Ineligibility for local authorization. Any person whose class A or class B license is suspended or revoked by the attorney general is ineligible for local authorization to conduct raffles, sports pools, or bingo during the period of suspension or revocation.

Approved April 6, 1989
Filed April 7, 1989

613 Sec. 1-9
R. M.
Disapproved

CHAPTER 613

HOUSE BILL NO. 1641
(Lindgren, Gerl)

NIC VIDEO GAMING DEVICES

AN ACT to create and enact a new subsection to section 53-06.1-01, a new subsection to section 53-06.1-07, and two new sections to chapter 53-06.1 of the North Dakota Century Code, relating to electronic video gaming devices and commingling of pull tab and jar games of chance; to amend and reenact sections 53-06.1-07, 53-06.1-07.1, 53-06.1-14, 53-06.1-16.1, and 53-06.1-17 of the North Dakota Century Code, relating to pull tabs, jars, punchboards, and electronic video gaming devices; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 53-06.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Electronic video gaming device" means an electronic video machine or device that simulates the play of a game of chance, in the manner provided in this chapter or by rules adopted by the attorney general. The device may not directly dispense coins, cash, tokens, or anything of value other than a credit voucher.

SECTION 2. A new section to chapter 53-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Electronic video gaming devices - Limit on rent. For all purposes associated with the privilege of conducting games of chance utilizing the electronic video gaming devices, the monthly rent may not exceed fifty dollars per device.

SECTION 3. A new subsection to section 53-06.1-07 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The games of pull tabs and jars may be conducted only through use of commingled games.

* SECTION 4. AMENDMENT. Section 53-06.1-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-07. Games of chance allowed. Eligible organizations shall be permitted to conduct the following games of chance:

1. Eligible organizations licensed by the attorney general shall be permitted to conduct bingo, raffles, pull tabs, jars, punchboards,

* NOTE: Section 53-06.1-07 was also amended by section 10 of Senate Bill No. 2220, chapter 612, and section 1 of House Bill No. 1292, chapter 620.

twenty-one, and sports pools for professional sports only, draw poker, stud poker, and electronic video gaming device play of any of these games of chance.

2. College fraternities or sororities may conduct raffles and bingo.
3. Draw poker and stud poker in accordance with section 53-06.1-07-2. Any game of chance permitted in this section and played by the use of an electronic video gaming device must be played in the same manner and is subject to the same laws and rules applicable to the game of chance conducted, except:
 - a. In electronic video gaming device play of bingo, raffles, pull tabs, jars, or punchboards, no ticket need be sold and only electronic display of the results is required.
 - b. In electronic video gaming device play of twenty-one, no chips need be used, no playing cards need be dealt, and the electronic video gaming device is considered the dealer.
 - c. In electronic video gaming device play of draw poker or stud poker, the limitation as to the number of occasions of play per year does not apply.

* SECTION 5. AMENDMENT. Section 53-06.1-07.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-07.1. Limitations on hours and participation in games of chance. A person under twenty-one years of age may not participate in the games of pull tabs, jars, punchboards, twenty-one, or sports pools or in any game conducted by use of an electronic video gaming device. The games of pull tabs, jars, punchboards, twenty-one, or sports pools and any game conducted by use of an electronic video gaming device may be conducted only during the hours when alcoholic beverages may be dispensed in accordance with applicable regulations of the state or the political subdivision.

SECTION 6. A new section to chapter 53-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Licensing of electronic video gaming devices. A licensed organization desiring to conduct games of chance by utilizing electronic video gaming devices shall apply for an annual license for each machine from the attorney general before July first of each year on a form provided by the attorney general and shall include with the application a one hundred dollar fee.

** SECTION 7. AMENDMENT. Section 53-06.1-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-14. Distributors and manufacturers - Licensure.

1. Every manufacturer of charitable gaming tickets and every distributor shall annually apply before the first day of April in each year for a an annual license upon a form prescribed by the attorney general before the first day of April in each year and shall submit the appropriate license fee. Each applicant shall

* NOTE: Section 53-06.1-07.1 was also amended by section 2 of House Bill No. 1292, chapter 620; section 11 of Senate Bill No. 2220, chapter 612; and section 1 of Senate Bill No. 2440, chapter 621.

** NOTE: Section 53-06.1-14 was also amended by section 15 of Senate Bill No. 2220, chapter 612; section 2 of House Bill No. 1210, chapter 618; and section 7 of Senate Bill No. 2455, chapter 170.

provide such necessary and reasonable information as the attorney general may require. The license fee for a distributor is one thousand dollars, and the license fee for a manufacturer of charitable gaming tickets is two hundred fifty dollars.

2. Every nonresident manufacturer or distributor of bingo paper or supplies doing business in this state shall appoint a North Dakota agent who is licensed as a distributor. No distributor may sell, market, or otherwise distribute raffle tickets or equipment for games of chance except to eligible organizations. A manufacturer of charitable gaming tickets may not sell, market, or otherwise distribute charitable gaming tickets, other than to a licensed distributor.
3. Every eligible organization shall acquire all raffle tickets or equipment for games of chance from a distributor licensed under this chapter, unless the raffle tickets or equipment for games of chance are printed, manufactured, or constructed by the eligible organization or unless the raffle tickets are obtained from a resident printer who has printed the raffle tickets at the request of the organization. At no time shall any eligible organization print, manufacture, or construct any raffle tickets or equipment for games of chance for sale to any other eligible organization.
4. Every manufacturer or distributor of electronic video gaming devices through which games of chance are conducted under this chapter shall apply before the first day of April of each year for an annual license upon a form prescribed by the attorney general and shall submit the appropriate license fee. Each applicant shall provide such necessary and reasonable information as the attorney general requires. The license fee for a manufacturer or distributor is one thousand dollars. Every eligible organization shall purchase or lease all electronic video gaming devices from a manufacturer or distributor licensed under this chapter.
5. No licensed or authorized eligible organization may be a distributor. No wholesaler of liquor or alcoholic beverages may be a distributor.
- 5- 6. The attorney general may, by motion based on reasonable grounds or on written complaint, suspend or revoke a distributor's or manufacturer's license in accordance with chapter 28-32 for violation, by the licensee or any officer, director, agent, member, or employee of the licensee, of this chapter or any rule adopted under this chapter.

* SECTION 8. AMENDMENT. Section 53-06.1-16.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-16.1. Bogus chips, marked cards, cheating devices, or fraudulent schemes unlawful - Penalty. It is unlawful for any person playing or conducting any authorized game of chance conducted by a licensed organization:

* NOTE: Section 53-06.1-16.1 was also amended by section 8 of House Bill No. 1185, chapter 615.

1. To use bogus or counterfeit chips or charitable gaming tickets, or to substitute or use any game, cards, or charitable gaming tickets that have been marked or tampered with.
2. To employ or have on one's person any cheating device to facilitate cheating in any game of chance.
3. To use any fraudulent scheme or technique.
4. To tamper with an electronic video gaming device, attempt or conspire to manipulate the outcome or the payoff of a video gaming device, or manipulate the outcome or payoff of a video gaming device by physical tampering or other interference with the proper functioning of the machine.

A person violating this section is guilty of a class A misdemeanor unless the violation is of subsection 4 or the amount gained through the use of these items, schemes, or techniques resulted in a person obtaining over five hundred dollars, then the offense is a class C felony.

* SECTION 9. AMENDMENT. Section 53-06.1-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-17. Rules. The licensing authority shall adopt rules in accordance with chapter 28-32, relating to, but not limited to, methods of play, conduct, and promotion of games of chance; methods, procedures, and minimum standards for accounting and recordkeeping; requiring reports by licensees and authorized organizations; methods of competition and doing business by distributors; ~~and~~ marking or identification of raffle tickets, charitable gaming tickets, bingo equipment, jars, punchboards, or any other implements of gambling used or distributed in this state to implement or effectuate the provisions and purpose of this chapter; quality standards for the manufacture of charitable gaming tickets; regulation of electronic video gaming devices including licensing of machines, manufacturers, and distributors; testing, approval, and establishment of specifications for electronic video gaming devices; establishment of methods and rules of play of electronic video gaming devices; regulation of sales or lease agreements for electronic video gaming devices; to ensure that the entire net proceeds of games of chance are devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses as defined by this chapter; to define capital improvements and furnishings; to protect and promote the public interest; to ensure fair and honest games of chance; to ensure that fees and taxes are paid; and to seek to prevent or detect unlawful gambling activity.

SECTION 10. EFFECTIVE DATE. Section 3 of this Act becomes effective on July 1, 1990.

Approved April 14, 1989
Filed April 14, 1989

* NOTE: Section 53-06.1-17 was also amended by section 9 of House Bill No. 1185, chapter 615.

CHAPTER 614

HOUSE BILL NO. 1290
(Representatives A. Olson, Kingsbury)
(Senator Tallackson)

LOCAL APPROVAL OF CERTAIN GAMING ORGANIZATIONS

AN ACT to create and enact a new section to chapter 53-06.1 of the North Dakota Century Code, relating to limited approval to conduct games of chance by organizations that have not been in existence in this state for two years.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 53-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Waiver of two-year existence requirement. An organization that has not been in existence within this state for two years becomes an eligible organization for purposes of this section upon approval by the governing body of the city, if the organization will conduct games of chance only within that city, or upon approval by the board of county commissioners, if the organization will conduct games of chance within the county. An organization that becomes an eligible organization under this section is not eligible for licensure by the attorney general until it has been in existence within this state for two years and may only conduct games of chance under local authorization as provided in section 53-06.1-03 until it becomes an eligible organization as otherwise provided in this chapter.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 615

HOUSE BILL NO. 1185
(Committee on Judiciary)
(At the request of the Attorney General)

CHARITABLE GAMING ACTIVITIES AND PENALTIES

AN ACT to create and enact a new section to chapter 53-06.1 and a new subsection to section 53-06.1-06 of the North Dakota Century Code, relating to prohibiting organizations that derive revenue from games of chance from using any money in certain political activities and prohibiting certain people from gaming; to amend and reenact sections 53-06.1-03, 53-06.1-05, 53-06.1-06.1, subsection 4 of section 53-06.1-07.2, subsections 1 and 3 of section 53-06.1-11, sections 53-06.1-16.1, and 53-06.1-17 of the North Dakota Century Code, relating to fees for local authorization, monetary fines, the removal of a tax credit, the clarification of expense restrictions, and prohibited gaming activity; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 53-06.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-03. Licensure - Exceptions for raffles, sports pools, and bingo - City and county authorization - Fees - Suspension and revocation.

1. Except as otherwise provided in this subsection, eligible organizations desiring to conduct games of chance shall annually apply for a license from the attorney general before July first on forms provided by the attorney general and shall include with the application a one hundred dollar license fee. An eligible organization may apply for local authorization to conduct raffles or bingo in which the primary prize does not exceed one thousand dollars, and the aggregate does not exceed two thousand dollars, or to conduct sports pools in which the total wagers do not exceed five hundred dollars for each pool. To obtain local authorization, the eligible organization shall apply directly to the governing body of the city in which it conducts its principal activities or, if its principal activities are conducted in a county but outside the limits of a city, it shall apply to the board of county commissioners. Applications for the conduct of games of chance subject to authorization by a city or county must be made on forms provided by the attorney general. The governing body may by ordinance or resolution establish authorization fees that, for an authorization for one occasion, do not exceed ten dollars, and for other authorizations, do not exceed twenty-five dollars for each authorization.

* NOTE: Section 53-06.1-03 was also amended by section 1 of House Bill No. 1210, chapter 618; section 1 of House Bill No. 1239, chapter 617; section 3 of Senate Bill No. 2220, chapter 612; section 1 of Senate Bill No. 2294, chapter 619; and section 1 of Senate Bill No. 2482, chapter 616.

2. The attorney general shall license such organizations which conform to the requirements of this chapter by issuing licenses as follows:
 - a. A class A license to an eligible organization licensed as a retail alcoholic beverage dealer in North Dakota that maintains a building for the use of its members and guests, and that offers meals or liquor or both as part of its operation.
 - b. A class B license to any other eligible organization. The attorney general may deny a class B license to an otherwise eligible organization if the organization is connected, directly or indirectly, to the holder of a North Dakota retail alcoholic beverage license.
 - c. A class C license to an eligible organization that conducts games of chance on not more than two occasions per year, regardless of whether that organization is licensed as a retail alcoholic beverage dealer in this state.
 - d. The attorney general shall establish by rule no more than two additional classes of licenses based on the frequency of gaming, the types of games of chance conducted by the eligible organization, and the adjusted gross proceeds collected or expected to be collected by the eligible organization.
3. Games of chance may be operated or conducted only on premises or sites set forth in the application as follows:
 - a. Class A license applicants are limited to one location. A special permit for an alternate location may be granted by the attorney general for a single specific occasion per licensing year upon written request.
 - b. License applicants must first secure approval of the proposed site or sites on which it intends to conduct games of chance under this chapter from the governing body of the city, if within city limits, or the county, if outside city limits, where the site or sites are located. This approval or permit, which may be granted at the discretion of the governing body, must accompany the license application to the attorney general. The governing body may charge a one hundred dollar fee for this permit; ~~which the organization may deduct from its tax liability under section 53-06-1-12 for the year in which the permit fee is paid.~~
 - c. Rented premises are subject to rules adopted by the attorney general.
 - d. Only one eligible organization at a time may be authorized to conduct games of chance at a specific location, except that a raffle drawing may be conducted for special occasions when one of the following conditions are met:
 - (1) When the area for the raffle drawing is physically separated from the area where gaming is conducted by the regular licensee.

- (2) Upon request of the licensee, the license is suspended for that specific day by the attorney general.
- e. Licenses, rules of play, and state identification devices must be displayed on forms and in the manner specified in rules adopted by the attorney general.
4. The attorney general may, by motion, based on reasonable ground or upon written complaint, suspend or revoke, under chapter 28-32, any license granted under this chapter for violations by the licensee, or any officer, director, agent, member, or employee of the licensee, of this chapter or any rule adopted under this chapter.
5. The attorney general may impose monetary fines on licensed organizations, distributors, and manufacturers for failure to comply with any provision of this chapter or any rule adopted under this chapter. The monetary fine for each violation by an organization is a minimum of twenty-five dollars and may not exceed two percent of the organization's average quarterly gross proceeds, or five thousand dollars, whichever is greater. The monetary fine for each violation by a distributor or manufacturer is a minimum of one hundred dollars and may not exceed five thousand dollars. This fine may be in addition to or in lieu of license suspensions or revocations.

* SECTION 2. AMENDMENT. Section 53-06.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-05. Local approval for educational organizations, college fraternities, and sororities for raffles and bingo. An educational organization, college fraternity, or sorority shall apply in writing to the governing body of the city in which it is located, or to the board of county commissioners if the educational organization or the college is located outside the geographical limits of a city, for permission to conduct raffles or bingo at least thirty days prior to each occasion. The application shall state the time, place, and educational, charitable, patriotic, or other public-spirited uses to which the proceeds will be devoted. An applicant fraternity or sorority shall include a signed acknowledgment by the administration of the college or university that the applicant is a recognized fraternity or sorority. The governing body may at its own discretion, and upon application, grant permission for raffles and bingo to be held at specifically designated times and places for specific uses covering a one-year period. The governing body may by ordinance or resolution establish authorization fees not to exceed ~~ten~~ twenty-five dollars for an each authorization for one occasion and not to exceed twenty-five dollars for an authorization covering more than one occasion. If the governing body, at its own discretion, chooses to authorize raffles or bingo pursuant to this chapter, the governing body may do so by resolution.

SECTION 3. A new subsection to section 53-06.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The attorney general may prohibit a person from playing games of chance if the person violates any provision of this chapter or any rule adopted under this chapter.

* NOTE: Section 53-06.1-05 was also amended by section 2 of House Bill No. 1185, chapter 612.

SECTION 4. AMENDMENT. Section 53-06.1-06.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-06.1. Work permits.

1. Cities, for sites within city limits, and counties, for sites outside city limits, may require a person associated with the conduct of games of chance to obtain a work permit, charge a fee for issuance of a work permit, and conduct reasonable inquiries into the background of the individual. Any fee charged for issuance of a work permit may not exceed the actual expense to the city or county of licensing the applicant. The attorney general may adopt guidelines relating to issuance of work permits by counties and cities.
2. The attorney general may establish a centralized statewide work permit system to determine the identity, prior activities, and present employment of all gaming employees in this state. The information must be held confidential except in the proper administration of this chapter or any rule adopted under this chapter, or to an authorized law enforcement agency. No gaming organization may employ any person or a gaming employee nor may any person be employed as a gaming employee unless that person possesses a current and valid work permit. The attorney general may issue, renew, deny, suspend, and revoke work permits. Subject to the attorney general's discretion, a temporary work permit may be issued. If an application is denied or a work permit is suspended or revoked, the notice by the attorney general must include a statement of the facts upon which the attorney general relied in making the decision. Any person whose application for a work permit has been denied may, not later than twenty days following receipt of the notice, apply to the attorney general for a hearing. A work permit expires unless renewed within fourteen days after a change of employment or if the person is not employed as a gaming employee within the state for more than ninety days. The attorney general may issue an emergency order, effective upon service to the permitholder, suspending a person's work permit upon a determination that the suspension is necessary to preserve effective regulation and control of gaming, to preserve the public interest or morals, or the person obtained a work permit by misrepresentation. The attorney general may charge each gaming employee an annual work permit fee of twenty-five dollars and a fee of five dollars for each change of employment.

SECTION 5. AMENDMENT. Subsection 4 of section 53-06.1-07.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The eligible organization shall assess the players ten dollars per player, or for games with a pot of at least ten dollars, two percent of the pot in each game. For games with a pot of less than ten dollars, an assessment is not required each player a fee not to exceed two dollars per half hour of playing time by that person, collected in advance. A fee may also be charged each player for entry into a tournament for prizes.

* SECTION 6. AMENDMENT. Subsections 1 and 3 of section 53-06.1-11 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. All moneys collected or received from games of chance and admissions thereto, except cash prizes of one hundred dollars or less paid immediately, must be deposited in a special account of the eligible organization which contains only that money. Cash prizes of more than one hundred dollars an amount to be determined by the attorney general, the purchase prices of merchandise prizes, and all expenses for such games of chance must be withdrawn from such account by consecutively numbered checks duly signed by a specified officer or officers of the eligible organization and payable to a specific person or organization. There must also be written on the check the nature of the expense or prize for which the check is drawn. No check may be drawn to "cash" or a fictitious payee. In the case of a cash prize of more than one hundred dollars, the prize may also be issued by an accountable receipt or nonnegotiable instrument approved by the attorney general.
3. Subject to the limitations of this subsection, expenses incurred in connection with holding, operating, or conducting any game for games of chance pursuant to this chapter may be deducted from adjusted gross proceeds, to the extent that total expenses for games of chance do not exceed forty-five percent of the total adjusted gross proceeds, computed on an annual basis. After December 31, 1989, cash shorts incurred in games of chance are classified as expenses toward the expense limitation. The figure used for adjusted gross proceeds is as determined in subsection 1 of section 53-06.1-01 before any reduction for taxes. This subsection does not authorize violations of the rent limitations contained in this chapter.

SECTION 7. A new section to chapter 53-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Eligible organizations not to use any money in certain political activities - Penalty. An eligible organization that derives any revenue from games of chance it conducts under this chapter may not use money from any source for the placing on the ballot of any initiated or referred measure or for any activities consisting of attempts to participate in any political campaign on behalf of or in opposition to any active official or person who is or has been a candidate for public office. Any funds expended by an eligible organization to promote or oppose an initiated or referred measure that has been placed on the ballot or for any activities that qualify as activities of a lobbyist under section 54-05.1-02, that are not compensation or expenses paid to a lobbyist, and that are not otherwise required to be reported under section 54-05.1-03 must be reported to the attorney general in the manner and at the times prescribed by the attorney general. An eligible organization that violates this section is subject to a suspension of its license to conduct games of chance under this chapter for up to one year.

** SECTION 8. AMENDMENT. Section 53-06.1-16.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 53-06.1-11 was also amended by section 3 of Senate Bill No. 2455, chapter 170.

** NOTE: Section 53-06.1-16.1 was also amended by section 8 of House Bill No. 1641, chapter 613.

53-06.1-16.1. Bogus chips, marked cards, cheating devices, or fraudulent schemes unlawful - Penalty. It is unlawful for any person playing or conducting any authorized game of chance conducted by a licensed organization:

1. To use bogus or counterfeit chips or charitable gaming tickets, or to substitute or use any game, cards, or charitable gaming tickets that have been marked or tampered with.
2. To employ or have on one's person any cheating device to facilitate cheating in any game of chance.
3. To willfully use any fraudulent scheme or technique, including when an operator or player of games of charitable gaming tickets directly or indirectly solicits, provides, or receives inside information of the status of a game for the benefit of either person.
4. To alter or counterfeit a site authorization, gaming license, or North Dakota gaming stamp.
5. To knowingly cause, aid, abet, or conspire with another person or to cause any person to violate any provision of this chapter or any rule adopted under this chapter.

A person violating this section is guilty of a class A misdemeanor unless the amount gained through the use of these items, schemes, or techniques resulted in a person obtaining over five hundred dollars, then the offense is a class C felony. However, if a person uses a fraudulent scheme regarding soliciting, providing, or receiving inside information, regardless of the amount gained, then the offense is a class C felony.

* SECTION 9. AMENDMENT. Section 53-06.1-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-17. Rules. The licensing authority shall adopt rules in accordance with chapter 28-32, relating to, but not limited to, methods of play, conduct, and promotion of games of chance; methods, procedures, and minimum standards for accounting and recordkeeping; requiring reports by licensees and authorized organizations; methods of competition and doing business by distributors; and marking or identification of raffle tickets, charitable gaming tickets, bingo equipment, ~~jars~~ ticket receptacles, punchboards, or any other implements of gambling used or distributed in this state to implement or effectuate the provisions and purpose of this chapter; quality standards for the manufacture of charitable gaming tickets; to ensure that the entire net proceeds of games of chance are devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses as defined by this chapter; ~~to define capital improvements and furnishings;~~ to protect and promote the public interest; to ensure fair and honest games of chance; to ensure that fees and taxes are paid; ~~to impose monetary fines and establish appeal procedures;~~ and to seek to prevent or detect unlawful gambling activity.

SECTION 10. EMERGENCY. Section 7 of this Act is declared to be an emergency measure.

Approved April 15, 1989
Filed April 17, 1989

* NOTE: Section 53-06.1-17 was also amended by section 9 of House Bill No. 1641, chapter 613.

CHAPTER 616

SENATE BILL NO. 2482
(Dotzenrod)

LOCAL RAFFLE OR BINGO AUTHORIZATION

AN ACT to amend and reenact section 53-06.1-03 of the North Dakota Century Code, relating to local authorization for public-spirited organizations to conduct raffles or bingo.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 53-06.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-03. Licensure - Exceptions for raffles, sports pools, and bingo - City and county authorization - Fees - Suspension and revocation.

1. Except as otherwise provided in this ~~subsection~~ section, eligible organizations desiring to conduct games of chance shall annually apply for a license from the attorney general before July first on forms provided by the attorney general and shall include with the application a one hundred dollar license fee. ~~An eligible~~
2. Any nonprofit organization ~~recognized as public-spirited by the governing body of a city or county~~ may ~~apply for~~ obtain local authorization to conduct raffles or bingo in which the primary prize does not exceed one thousand dollars, and the aggregate does not exceed two thousand dollars, or to conduct sports pools in which the total wagers do not exceed five hundred dollars for each pool. ~~For purposes of this subsection, the determination of what is a "public-spirited" organization is within the sole discretion of the governing body of the city or county. To obtain local authorization, the eligible organization shall apply directly to the governing body of the city in which it conducts its principal activities or, if its principal activities are conducted in a county but outside the limits of a city, it shall apply to the board of county commissioners. Applications for the conduct of games of chance subject to authorization by a city or county must be made on forms provided by the attorney general. The governing body may by ordinance or resolution establish authorization fees that, for an authorization for one occasion, do not exceed ten dollars, and for other authorizations, do not exceed twenty-five dollars.~~
- ~~2-~~ 3. The attorney general shall license such organizations which conform to the requirements of this chapter by issuing licenses as follows:
 - a. A class A license to an eligible organization licensed as a retail alcoholic beverage dealer in North Dakota that maintains

* NOTE: Section 53-06.1-03 was also amended by section 1 of House Bill No. 1185, chapter 615; section 1 of House Bill No. 1210, chapter 618; section 1 of House Bill No. 1239, chapter 617; section 3 of Senate Bill No. 2220, chapter 612; and section 1 of Senate Bill No. 2294, chapter 619.

a building for the use of its members and guests, and that offers meals or liquor or both as part of its operation.

- b. A class B license to any other eligible organization. The attorney general may deny a class B license to an otherwise eligible organization if the organization is connected, directly or indirectly, to the holder of a North Dakota retail alcoholic beverage license.
- c. A class C license to an eligible organization that conducts games of chance on not more than two occasions per year, regardless of whether that organization is licensed as a retail alcoholic beverage dealer in this state.
- d. The attorney general shall establish by rule no more than two additional classes of licenses based on the frequency of gaming, the types of games of chance conducted by the eligible organization, and the adjusted gross proceeds collected or expected to be collected by the eligible organization.

~~3-~~ 4. Games of chance may be operated or conducted only on premises or sites set forth in the application as follows:

- a. Class A license applicants are limited to one location. A special permit for an alternate location may be granted by the attorney general for a single specific occasion per licensing year upon written request.
- b. License applicants must first secure approval of the proposed site or sites on which it intends to conduct games of chance under this chapter from the governing body of the city, if within city limits, or the county, if outside city limits, where the site or sites are located. This approval or permit, which may be granted at the discretion of the governing body, must accompany the license application to the attorney general. The governing body may charge a one hundred dollar fee for this permit, which the organization may deduct from its tax liability under section 53-06.1-12 for the year in which the permit fee is paid.
- c. Rented premises are subject to rules adopted by the attorney general.
- d. Only one eligible organization at a time may be authorized to conduct games of chance at a specific location, except that a raffle drawing may be conducted for special occasions when one of the following conditions are met:
 - (1) When the area for the raffle drawing is physically separated from the area where gaming is conducted by the regular licensee.
 - (2) Upon request of the licensee, the license is suspended for that specific day by the attorney general.

- e. Licenses, rules of play, and state identification devices must be displayed on forms and in the manner specified in rules adopted by the attorney general.
- 4- 5. The attorney general may, by motion, based on reasonable ground or upon written complaint, suspend or revoke, under chapter 28-32, any license granted under this chapter for violations by the licensee, or any officer, director, agent, member, or employee of the licensee, of this chapter or any rule adopted under this chapter.

Approved April 13, 1989

Filed April 13, 1989

CHAPTER 617

HOUSE BILL NO. 1239
(Representatives A. Hausauer, Ulmer)
(Senator Holmberg)

LOCAL RAFFLE OR BINGO PRIZES

AN ACT to amend and reenact subsection 1 of section 53-06.1-03 of the North Dakota Century Code, relating to the limitation on the aggregate of prizes that may be awarded in games of raffle or bingo conducted by eligible organizations upon local authorization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 53-06.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as otherwise provided in this subsection, eligible organizations desiring to conduct games of chance shall annually apply for a license from the attorney general before July first on forms provided by the attorney general and shall include with the application a one hundred dollar license fee. An eligible organization may apply for local authorization to conduct raffles or bingo in which the primary prize does not exceed one thousand dollars, and the aggregate does not exceed ~~two~~ six thousand dollars annually, or to conduct sports pools in which the total wagers do not exceed five hundred dollars for each pool. To obtain local authorization, the eligible organization shall apply directly to the governing body of the city in which it conducts its principal activities or, if its principal activities are conducted in a county but outside the limits of a city, it shall apply to the board of county commissioners. Applications for the conduct of games of chance subject to authorization by a city or county must be made on forms provided by the attorney general. The governing body may by ordinance or resolution establish authorization fees that, for an authorization for one occasion, do not exceed ten dollars, and for other authorizations, do not exceed twenty-five dollars.

Approved March 14, 1989
Filed March 15, 1989

- * NOTE: Section 53-06.1-03 was also amended by section 1 of House Bill No. 1185, chapter 615; section 1 of House Bill No. 1210, chapter 618; section 3 of Senate Bill No. 2220, chapter 612; section 1 of Senate Bill No. 2294, chapter 619; and section 1 of Senate Bill No. 2482, chapter 616.

CHAPTER 618

HOUSE BILL NO. 1210
(Committee on Judiciary)

(At the request of the Office of Management and Budget)

GAMING FEES

AN ACT to amend and reenact subsection 1 of section 53-06.1-03 and subsections 1 and 3 of section 53-06.1-14 of the North Dakota Century Code, relating to the amount of gaming license fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 53-06.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as otherwise provided in this subsection, eligible organizations desiring to conduct games of chance shall annually apply for a license from the attorney general before July first on forms provided by the attorney general and shall include with the application a one hundred fifty dollar license fee, except for those organizations whose average annual gross proceeds do not exceed twenty-five thousand dollars, for which the fee is one hundred dollars. An eligible organization may apply for local authorization to conduct raffles or bingo in which the primary prize does not exceed one thousand dollars, and the aggregate does not exceed two thousand dollars, or to conduct sports pools in which the total wagers do not exceed five hundred dollars for each pool. To obtain local authorization, the eligible organization shall apply directly to the governing body of the city in which it conducts its principal activities or, if its principal activities are conducted in a county but outside the limits of a city, it shall apply to the board of county commissioners. Applications for the conduct of games of chance subject to authorization by a city or county must be made on forms provided by the attorney general. The governing body may by ordinance or resolution establish authorization fees that, for an authorization for one occasion, do not exceed ten dollars, and for other authorizations, do not exceed twenty-five dollars.

** SECTION 2. AMENDMENT. Subsections 1 and 3 of section 53-06.1-14 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Every manufacturer of charitable gaming tickets, every manufacturer of paper bingo cards, and every distributor shall annually apply for a license upon a form prescribed by the attorney general before the first day of April in each year and shall submit the appropriate license fee. Each applicant shall provide such necessary and reasonable information as the attorney general may

* NOTE: Section 53-06.1-03 was also amended by section 1 of House Bill No. 1185, chapter 615; section 1 of House Bill No. 1239, chapter 617; section 3 of Senate Bill No. 2220, chapter 612; section 1 of Senate Bill No. 2294, chapter 619; and section 1 of Senate Bill No. 2482, chapter 616.

** NOTE: Section 53-06.1-14 was also amended by section 15 of Senate Bill No. 2220, chapter 612; section 7 of House Bill No. 1641, chapter 613; and section 7 of Senate Bill No. 2455, chapter 170.

require. The license fee for a distributor is one thousand five hundred dollars, and the license fee for a manufacturer of charitable gaming tickets or a manufacturer of paper bingo cards is two hundred fifty thousand dollars.

3. Every eligible organization shall acquire all raffle tickets or equipment for games of chance from a distributor licensed under this chapter, unless the raffle tickets or equipment for games of chance are printed, manufactured, or constructed by the eligible organization or unless the raffle tickets are obtained from a resident printer who has printed the raffle tickets at the request of the organization. At no time shall any eligible organization print, manufacture, or construct any raffle tickets or equipment for games of chance for sale to any other eligible organization. No game of charitable gaming tickets, punchboards, sports pool boards, or a series of raffle wheel ticket cards may be sold without a North Dakota gaming stamp being affixed to them. North Dakota licensed distributors shall purchase the North Dakota gaming stamps from the attorney general's office and the cost for each stamp may not exceed twenty-five cents.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 619

SENATE BILL NO. 2294
(Senators Olson, W. Meyer)
(Representative R. Larson)

LOCAL CELEBRATION RAFFLES

AN ACT to amend and reenact subsection 1 of section 53-06.1-03 of the North Dakota Century Code, relating to local authorization for city or county festivals or celebrations to conduct raffles under the games of chance laws; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 53-06.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as otherwise provided in this subsection, eligible organizations desiring to conduct games of chance shall annually apply for a license from the attorney general before July first on forms provided by the attorney general and shall include with the application a one hundred dollar license fee.

- a. An eligible organization may ~~apply for obtain~~ local authorization to conduct raffles or bingo in which the primary prize does not exceed one thousand dollars, and the aggregate does not exceed two thousand dollars, or to conduct sports pools in which the total wagers do not exceed five hundred dollars for each pool.

- b. A nonprofit organization that conducts a city or county festival or celebration, or a centennial committee organized by a city or county for the purpose of celebrating the North Dakota centennial, may obtain local authorization to conduct raffles in which the primary prize does not exceed one thousand dollars and the aggregate does not exceed two thousand dollars. For purposes of this subdivision, a "city or county festival or celebration" means an event:

- (1) In celebration of local heritage, anniversary of establishment of the political subdivision, or other significant local event recognized as public-spirited by the governing body of the city or county; and

- (2) Supported by significant community participation.

- c. To obtain local authorization, the ~~eligible~~ organization shall apply directly to the governing body of the city in which it conducts its principal activities or, if its principal activities are conducted in a county but outside the limits of

* NOTE: Section 53-06.1-03 was also amended by section 1 of House Bill No. 1185, chapter 615; section 1 of House Bill No. 1210, chapter 618; section 1 of House Bill No. 1239, chapter 617; section 3 of Senate Bill No. 2220, chapter 612; and section 1 of Senate Bill No. 2482, chapter 616.

a city, it shall apply to the board of county commissioners. Applications for the conduct of games of chance subject to authorization by a city or county must be made on forms provided by the attorney general. The governing body may by ordinance or resolution establish authorization fees that, for an authorization for one occasion, do not exceed ten dollars, and for other authorizations, do not exceed twenty-five dollars.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 620

HOUSE BILL NO. 1292
(Representatives Gorman, Tomac, Shaft)
(Senator D. Meyer)

CALCUTTAS

AN ACT to create and enact a new section to chapter 53-06.1 of the North Dakota Century Code, relating to calcuttas as allowable games of chance; and to amend and reenact sections 53-06.1-07 and 53-06.1-07.1 of the North Dakota Century Code, relating to calcuttas as allowable games of chance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 53-06.1-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-07. Games of chance allowed. Eligible organizations shall be permitted to conduct the following games of chance:

1. Eligible organizations licensed by the attorney general shall be permitted to conduct bingo, raffles, calcuttas, pull tabs, jars, punchboards, twenty-one, and sports pools for professional sports only.
2. College fraternities or sororities may conduct raffles and bingo.
3. Draw poker and stud poker in accordance with section 53-06.1-07.2.

** SECTION 2. AMENDMENT. Section 53-06.1-07.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-07.1. Limitations on hours and participation in games of chance. A person under twenty-one years of age may not participate in placing a wager in the games of pull tabs, jars, punchboards, twenty-one, calcuttas or sports pools. The games of pull tabs, jars, punchboards, twenty-one, or sports pools may be conducted only during the hours when alcoholic beverages may be dispensed in accordance with applicable regulations of the state or the political subdivision.

SECTION 3. A new section to chapter 53-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Calcuttas. An eligible organization may allow the playing of a calcutta on the authorized site. Calcuttas are allowed for professional or amateur sporting events held in this state, but not for elementary, secondary, or postsecondary education sports events. The eligible organization shall post at the site all rules affecting the conduct of

* NOTE: Section 53-06.1-07 was also amended by section 10 of Senate Bill No. 2220, chapter 612, and section 4 of House Bill No. 1641, chapter 613.

** NOTE: Section 53-06.1-07.1 was also amended by section 11 of Senate Bill No. 2220, chapter 612; section 1 of Senate Bill No. 2440, chapter 621; and section 5 of House Bill No. 1641, chapter 613.

calcuttas or requirements of participants. An eligible organization may not have an interest in the outcome of the calcutta. A participant who places a wager in the calcutta auction pool must be at the authorized site. No more than one wager per competitor may be allowed in any calcutta pool. The amounts paid to calcutta pool participants in prizes may not exceed ninety percent of the gross proceeds. No competitor in a calcutta pool may be under eighteen years of age.

Approved April 10, 1989

Filed April 11, 1989

CHAPTER 621

SENATE BILL NO. 2440
(Senators Tennesfos, Redlin)
(Representatives Hoffner, Wald)

BINGO AGE LIMITS

AN ACT to amend and reenact section 53-06.1-07.1 of the North Dakota Century Code, relating to age limitations for participation in games of bingo.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 53-06.1-07.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-07.1. Limitations on hours and participation in games of chance. A person under twenty-one years of age may not participate in the games of pull tabs, jars, punchboards, twenty-one, or sports pools. A person under eighteen years of age not accompanied by an adult may not participate in the game of bingo unless the bingo game is locally authorized under section 53-06.1-03 or the game's prize structure does not exceed those allowed under section 53-06.1-03 for locally authorized games. The games of pull tabs, jars, punchboards, twenty-one, or sports pools may be conducted only during the hours when alcoholic beverages may be dispensed in accordance with applicable regulations of the state or the political subdivision.

Approved April 6, 1989
Filed April 7, 1989

* NOTE: Section 53-06.1-07.1 was also amended by section 5 of House Bill No. 1641, chapter 613; section 2 of House Bill No. 1292, chapter 620; and section 11 of Senate Bill No. 2220, chapter 612.

CHAPTER 622

HOUSE BILL NO. 1249
(Gerl, Payne)

TWENTY-ONE WAGERS

AN ACT to amend and reenact section 53-06.1-10 of the North Dakota Century Code, relating to maximum and minimum wagers in the game of twenty-one.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 53-06.1-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-10. Twenty-one - Sale of chips - Redemption - Wager - Limit - Rules of play. Any licensee or other eligible organization may conduct and control the playing of the card game twenty-one on the ~~licensee's or eligible organization's~~ premises or authorized site of the licensee or eligible organization, but at no other location. No money may be allowed on the table. The licensee or eligible organization shall provide playing chips of various denominations to the participants. Chips shall be redeemed by the licensee or eligible organization for their full value. The maximum limit per wager ~~is two~~ may be set by the licensee or eligible organization at not more than five dollars and wagers in increments of one dollar must be accepted up to the maximum limit. ~~A wager of one dollar must be accepted.~~ A player may not play more than two hands at the same time, and no player may play two hands unless another position is open at the table and no other player wishes to play at that position. Only the player actually playing a hand may place a wager on any hand. Twenty-one is a card game played by a maximum of seven players and one dealer. The dealer shall be a representative of the eligible organization sponsoring the game of chance. ~~All players play their~~ Each player plays the player's hand against the dealer's hand. In order to remain in the hand being dealt, neither the player nor the dealer may play a hand with a count greater than twenty-one. A count of twenty-one obtained with two cards is termed a natural twenty-one and is an automatic pay out except in case of a tie count with the dealer. Players may double down on a natural twenty-one. In the case of matching or tie count between the player and the dealer, no winner is declared and both persons keep their ~~wager~~ wagers. Each licensee or eligible organization conducting twenty-one shall post rules relating to the conduct of the game in a conspicuous location near where the game is played.

Approved April 7, 1989
Filed April 7, 1989

* NOTE: Section 53-06.1-10 was also amended by section 4 of Senate Bill No. 2220, chapter 612.

CHAPTER 623

HOUSE BILL NO. 1342
(Graba, Gerl)

RAFFLE PRIZE LIMITS

AN ACT to amend and reenact section 53-06.1-10.1 of the North Dakota Century Code, relating to limitations on cash prizes in raffles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.1-10.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.1-10.1. Raffles - Limitation - Prizes. Prizes for raffles may include any property which may be legally owned and possessed, but may not include real estate. Cash prizes may be awarded in raffles conducted under this chapter provided the value of no single cash prize exceeds ~~five hundred~~ one thousand dollars, and provided further that no eligible organization may award cash prizes totaling more than ~~five hundred~~ three thousand dollars in the aggregate during any day.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 624

HOUSE BILL NO. 1184
(Committee on State and Federal Government)
(At the request of the North Dakota Racing Commission)

OFF TRACK WAGERS AND RACING COMMISSION

AN ACT to create and enact a new section to chapter 53-06.2 of the North Dakota Century Code, relating to off track parimutuel wagering; and to amend and reenact sections 53-06.2-01, 53-06.2-02, 53-06.2-03, 53-06.2-05, 53-06.2-08, 53-06.2-11, and 53-06.2-16 of the North Dakota Century Code, relating to the racing commission, horse racing, and parimutuel wagering.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.2-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.2-01. Definitions. As used in this chapter:

1. "Breeders' fund" means a fund, administered by the commission, established to financially reward breeders or owners of North Dakota horses that win races in the state.
- ~~1-~~ 2. "Certificate system" means the system of betting described in section 53-06.2-10.
- ~~2-~~ 3. "Charitable organization" means a nonprofit organization operated for the relief of poverty, distress, or other conditions of public concern in this state, and has been so engaged in this state for at least two years.
- ~~3-~~ 4. "Civic and service club" means a branch, lodge, or chapter of a nonprofit national or state organization that is authorized by its written constitution, charter, articles of incorporation, or bylaws to engage in a civic or service purpose in this state, and has so existed in this state for at least two years. The term includes a similar local nonprofit organization, not affiliated with a state or national organization, which is so recognized by a resolution adopted by the governing body of the local jurisdiction in which the organization conducts its principal activities, and which has existed in this state for at least two years.
- ~~4-~~ 5. "Commission" means the North Dakota racing commission.
- ~~5-~~ 6. "Director" means the director of the commission.
- ~~6-~~ 7. "Fraternal organization" means a nonprofit organization in this state, which is a branch, lodge, or chapter of a national or state

organization and exists for the common business, brotherhood, or other interests of its members, and has so existed in this state for two years. The term does not include a college or high school fraternity.

- ~~7-~~ 8. "Local jurisdiction" means, with respect to a site inside the city limits of a city, that city, and with respect to a site not inside the city limits of a city, the county in which the site is located.
- ~~8-~~ 9. "Other public-spirited organization" means a nonprofit organization recognized by the governing body of the appropriate local jurisdiction by resolution as public-spirited and eligible under this chapter.
10. "Purse fund" means a fund, administered by the commission, established to supplement and improve purses offered at race tracks within the state.
- ~~9-~~ 11. "Racing" means horse racing under the certificate system.
- ~~10-~~ 12. "Religious organization" means a nonprofit organization, church, body of communicants, or group gathered in common membership for mutual support and edification in piety, worship, and religious observances, and which has been so gathered or united in this state for at least two years.
- ~~11-~~ 13. "Veterans' organization" means a congressionally chartered organization in this state, or a branch, lodge, or chapter of a nonprofit national or state organization in this state, the membership of which consists of individuals who were members of the armed services or forces of the United States, and which has so been in existence in this state for at least two years.

* SECTION 2. AMENDMENT. Section 53-06.2-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.2-02. Racing commission - Members - Appointment - Term - Qualifications - Compensation.

1. A North Dakota racing commission is established in the office of the secretary of state attorney general. The commission consists of the secretary of state chairman and four other members appointed by the governor, with the consent of the senate. The members serve five-year terms and until a successor is appointed and qualified. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves only for the unexpired portion of the term. The terms of the commissioners must be staggered so that one term expires each July first. At the expiration of the five-year term of each incumbent member of the commission, the governor shall appoint a new member to the commission.
2. A person is ineligible for appointment to the commission if that person has not been a resident of this state for at least two years before the date of appointment. A person is also ineligible if that person is not of such character and reputation as to promote public confidence in the administration of racing in this state. A

* NOTE: Section 53-06.2-02 was also amended by section 1 of House Bill No. 1204, chapter 625.

person who has a financial interest in racing cannot be a member of the commission and cannot be employed by the commission. Failure to maintain compliance with this subsection is grounds for removal from the commission or from employment with the commission.

3. Commission members are entitled to forty dollars per day for compensation, and mileage and expense reimbursement as allowed to other state employees.

~~4. The secretary of state is the chairman of the commission.~~

* SECTION 3. AMENDMENT. Section 53-06.2-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.2-03. Director of racing - Appointment - Qualifications - Salary - Duties - Other personnel ~~—Administrative functions.~~

1. The commission shall appoint a director of racing. The commission shall establish the director's qualifications and salary.
2. The director shall devote ~~full~~ such time to the duties of the office as the commission may prescribe. The director is the executive officer of the commission and shall enforce the rules and orders of the commission. The director shall perform other duties the commission prescribes.
3. The director may employ other persons as authorized by the commission.
4. ~~Administrative functions of the commission, except personnel matters, are under the secretary of state's general supervision.~~

SECTION 4. AMENDMENT. Section 53-06.2-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.2-05. Powers of commission. The commission may:

1. Compel the production of all documents showing the receipts and disbursements of any licensee and determine the manner in which such financial records are to be kept.
2. Investigate the operations of any licensee and ~~cause the various places where race meets are held under the certificate system to be visited and inspected at reasonable intervals for the purpose of determining compliance with the rules~~ enter any vehicle or place of business, residence, storage, or racing of any licensee on the grounds of a licensed association to determine whether there has been compliance with the provisions of this chapter and rules adopted under this chapter, and to discover and seize any evidence of noncompliance.
3. Request appropriate state officials to perform inspections necessary for the health and safety of spectators, employees, participants, and horses that are lawfully on a racetrack.

* NOTE: Section 53-06.2-03 was also amended by section 2 of House Bill No. 1204, chapter 625.

4. License all participants in the racing industry and require and obtain information the commission deems necessary from license applicants. The commission may obtain from the bureau of criminal investigation, without charge, criminal history record information as required in the licensing process.
5. Adopt additional rules under which all horse races are conducted.

* SECTION 5. AMENDMENT. Subsection 2 of section 53-06.2-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The commission may charge a license fee for racing commensurate with the size and attendance of the race meet. The commission shall remit license fees to the state treasurer. The state treasurer shall place the fees in the operating fund of the tourism division of the economic development commission to pay for the operation and salaries of the commission and its employees.

** SECTION 6. AMENDMENT. Section 53-06.2-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.2-11. Bet payoff formulas - Uses by licensee of funds in excess of expenses —~~Special fund~~—~~Payment to general fund~~.

1. For each day of a race held at a racing meet where at which the average daily aggregate amount bet on the total races held of the win, place, and show parimutuel pool for the day exceeds fifty twenty-five thousand dollars, the licensee shall deduct eighteen and one-fourth twenty percent of the total parimutuel win, place, and show pool bet on the race. Of this amount, the The licensee may retain fourteen and one-fourth fifteen percent of the amount exceeding twenty-five thousand dollars and sixteen percent of the amount less than twenty-five thousand dollars for expenses. The licensee shall pay the One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota purse fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota breeders' fund for the respective breed of horses racing at that meet. The remaining four percent of the amount exceeding twenty-five thousand dollars, and three percent of the amount less than twenty-five thousand dollars, must be paid to the state treasurer as prescribed by the commission. Of the four percent paid to the state treasurer: up to the first one hundred thousand dollars is to be placed in the operating fund of the tourism division of the economic development commission from which all salaries and expenses of the commission and its employees are to be paid. The remaining funds must be placed in the general fund of the state.
2. For each race held at a meet where the average daily amount bet on the total races held does not exceed fifty thousand dollars, the licensee shall deduct eighteen and one-fourth percent of the total parimutuel pool bet on the individual race daily double, quinella, exacta, trifecta, or other wager combining two or more horses for winning payoffs, the licensee shall deduct twenty-five percent of each wagering pool. Of this amount, the licensee may retain

* NOTE: Subsection 2 of section 53-06.2-08 was also amended by section 3 of House Bill No. 1204, chapter 625.

** NOTE: Section 53-06.2-11 was also amended by section 4 of House Bill No. 1204, chapter 625.

fifteen and one fourth twenty percent for expenses. The licensee shall pay the One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota purse fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota breeders' fund for the respective breed of horses racing at that meet. The remaining three four percent must be paid to the state treasurer as prescribed by the North Dakota racing commission. Of the three percent paid to the state treasurer, up to the first one hundred thousand dollars is to be placed in the operating fund of the tourism division of the economic development commission from which all salaries and expenses of the commission and its employees are to be paid, except that the amounts in subsections 1 and 2 of this section may not exceed a total of one hundred thousand dollars. The remaining funds must be placed in the general fund of the state.

3. Unclaimed tickets and breakage as defined by the commission must be paid to the state treasurer as prescribed by the commission.
4. The licensee shall retain all other money in the parimutuel pool and pay it to bettors holding winning tickets as provided by rules adopted by the commission.
- 4- 5. A licensee may not use any of the portion deducted for expenses under subsections 1 and 2 for expenses not directly incurred by the licensee in conducting parimutuel racing under the certificate system. After paying qualifying expenses, the licensee shall use the remainder of the amount so withheld only for eligible uses allowed to charitable gambling organizations under subsection 6 7 of section 53-06.1-01.

SECTION 7. AMENDMENT. Section 53-06.2-16 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

~~53-06.2-16. Performing certain acts without license prohibited—~~
~~Penalty Prohibited Acts - Penalties. A~~

1. No person may ~~not~~ conduct a parimutuel horse race unless that person is licensed to ~~do so~~ by the commission. Violation of this ~~section~~ subsection is a class A misdemeanor.
2. No person may prearrange or attempt to prearrange the order of finish of a race. Violation of this subsection is a class C felony.

SECTION 8. A new section to chapter 53-06.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Off track wagering. In addition to racing under the certificate system, as authorized by this chapter, and conducted upon the premises of a race track, off track parimutuel wagering may be conducted in accordance with this chapter and interim standards that need not comply with chapter 28-32, or rules adopted by the commission under this chapter. Any organization qualified under section 53-06.2-06 to conduct racing may make written application to the commission for the conduct of off track parimutuel wagering on races held at licensed race courses inside the state or race courses outside the state, or both.

CHAPTER 625

HOUSE BILL NO. 1204
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

RACING COMMISSION REVENUE AND ADMINISTRATION

AN ACT to amend and reenact section 53-06.2-02, subsections 2 and 4 of section 53-06.2-03, subsection 2 of section 53-06.2-08, and sections 53-06.2-11 and 53-06.2-13 of the North Dakota Century Code, relating to the transfer of the North Dakota racing commission from the secretary of state's office to the attorney general's office, and the deletion of payment by the commission to the economic development commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 53-06.2-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.2-02. Racing commission - Members - Appointment - Term - Qualifications - Compensation.

1. A North Dakota racing commission is established in the office of the secretary of state attorney general. The commission consists of the secretary of state attorney general and four other members appointed by the governor, with the consent of the senate. The members serve five-year terms and until a successor is appointed and qualified. A member appointed to fill a vacancy arising from other than the natural expiration of a term serves only for the unexpired portion of the term. The terms of the commissioners must be staggered so that one term expires each July first. At the expiration of the five-year term of each incumbent member of the commission, the governor shall appoint a new member to the commission.
2. A person is ineligible for appointment to the commission if that person has not been a resident of this state for at least two years before the date of appointment. A person is also ineligible if that person is not of such character and reputation as to promote public confidence in the administration of racing in this state. A person who has a financial interest in racing cannot be a member of the commission and cannot be employed by the commission. Failure to maintain compliance with this subsection is grounds for removal from the commission or from employment with the commission.
3. Commission members are entitled to forty dollars per day for compensation, and mileage and expense reimbursement as allowed to other state employees.

* NOTE: Section 53-06.2-02 was also amended by section 2 of House Bill No. 1184, chapter 624.

4. The ~~secretary of state is~~ members of the commission shall appoint the chairman of the commission.

* SECTION 2. AMENDMENT. Subsections 2 and 4 of section 53-06.2-03 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. The director shall devote ~~full~~ such time to the duties of the office as the commission may prescribe. The director is the executive officer of the commission and shall enforce the rules and orders of the commission. The director shall perform other duties the commission prescribes.
4. Administrative functions of the commission, except personnel matters, are under the secretary of state's attorney general's general supervision.

** SECTION 3. AMENDMENT. Subsection 2 of section 53-06.2-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The commission may charge a license fee for racing commensurate with the size and attendance of the race meet. The commission shall remit license fees to the state treasurer for deposit in the general fund. The state treasurer shall place the fees in the operating fund of the tourism division of the economic development commission to pay for the operation and salaries of the commission and its employees.

*** SECTION 4. AMENDMENT. Section 53-06.2-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.2-11. Bet payoff formulas - Uses by licensee of funds in excess of expenses - ~~Special fund~~ Payment to general fund.

1. For each race held at a racing meet where the average daily amount bet on the total races held exceeds fifty thousand dollars, the licensee shall deduct eighteen and one-fourth percent of the total parimutuel pool bet on the race. Of this amount, the licensee may retain fourteen and one-fourth percent for expenses. The licensee shall pay the remaining four percent to the state treasurer as prescribed by the commission. Of the four percent paid to the state treasurer, up to the first one hundred thousand dollars is to be placed in the operating fund of the tourism division of the economic development commission from which all salaries and expenses of the commission and its employees are to be paid. The remaining funds must be placed in the general fund of the state to be deposited in the general fund.
2. For each race held at a meet where the average daily amount bet on the total races held does not exceed fifty thousand dollars, the licensee shall deduct eighteen and one-fourth percent of the total parimutuel pool bet on the individual race. Of this amount, the licensee may retain fifteen and one-fourth percent for expenses. The licensee shall pay the remaining three percent to the state treasurer as prescribed by the commission. Of the three percent

* NOTE: Section 53-06.2-03 was also amended by section 3 of House Bill No. 1204, chapter 624.

** NOTE: Subsection 2 of section 53-06.2-08 was also amended by section 5 of House Bill No. 1184, chapter 624.

*** NOTE: Section 53-06.2-11 was also amended by section 6 of House Bill No. 1184, chapter 624.

paid to the state treasurer; up to the first one hundred thousand dollars is to be placed in the operating fund of the tourism division of the economic development commission from which all salaries and expenses of the commission and its employees are to be paid; except that the amounts in subsections 1 and 2 of this section may not exceed a total of one hundred thousand dollars. The remaining funds must be placed in the general fund of the state to be deposited in the general fund.

3. The licensee shall retain all other money in the parimutuel pool and pay it to bettors holding winning tickets as provided by rules adopted by the commission.
4. A licensee may not use any of the portion deducted for expenses under subsections 1 and 2 for expenses not directly incurred by the licensee in conducting parimutuel racing under the certificate system. After paying qualifying expenses, the licensee shall use the remainder of the amount so withheld only for eligible uses allowed to charitable gambling organizations under subsection 6 of section 53-06.1-01.

SECTION 5. AMENDMENT. Section 53-06.2-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

53-06.2-13. Duty of attorney general to participate in certain hearings - Employment of private counsel by commission. The attorney general shall represent the state in all hearings before the commission and shall prosecute all criminal proceedings arising from violations of this chapter. ~~The commission shall reimburse the attorney general for the cost of all services rendered.~~ The commission may employ private counsel for adoption of rules and to ensure that its hearings are conducted fairly.

Approved March 14, 1989
Filed March 15, 1989

STATE GOVERNMENT

CHAPTER 626

HOUSE BILL NO. 1269
(Representatives Mertens, Schneider, Kloubec)
(Senators Heigaard, Olson, Stromme)

BOUNDARY ADVISORY COMMITTEE

AN ACT to amend and reenact section 54-01-17.2 of the North Dakota Century Code, establishing the North Dakota-Saskatchewan-Manitoba boundary advisory committee; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-01-17.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01-17.2. North Dakota-Saskatchewan-Manitoba boundary advisory committee. The North Dakota-Saskatchewan-Manitoba boundary advisory committee consists of the governor, who shall act as chairman, five members of the legislative assembly ~~who shall to~~ be chosen by the chairman of the legislative council ~~and, one of whom shall is to~~ be chosen by the committee to act as vice chairman, and five executive branch members, appointed by the governor. ~~The executive branch members shall include one member each from the areas of agriculture, agricultural research, water resources, economic development and tourism, and environmental protection.~~ The committee shall meet with an appropriate body of the province of Saskatchewan, ~~an appropriate body of the province of Manitoba, or jointly with the appropriate bodies of both provinces,~~ for the purpose of discussion of matters of mutual concern. The committee shall make any recommendations it deems necessary to the appropriate government or private entity. The expenses incurred by the executive branch members and the legislative council members in the performance of their duties under this section ~~shall~~ must be paid from funds appropriated for the respective offices and agencies.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,000, or so much thereof as may be necessary, to the governor's office for the purpose of defraying the expenses of hosting meetings of the North Dakota-Saskatchewan-Manitoba boundary advisory committee for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 627

HOUSE BILL NO. 1195
(Committee on Political Subdivisions)
(At the request of the Highway Department)

DISPLACED PERSON RELOCATION ASSISTANCE

AN ACT to amend and reenact sections 54-01.1-01, 54-01.1-02, 54-01.1-03, 54-01.1-04, 54-01.1-05, 54-01.1-06, 54-01.1-07, 54-01.1-08, 54-01.1-09, 54-01.1-10, 54-01.1-12, and 54-01.1-16 of the North Dakota Century Code, relating to relocation assistance programs, expanded policy declaration, definitions, displacement expenses and expense limits, mode of payment, advisory information and planning, available housing assurance, adoption of rules, uniform administration, nonduplication of payment, gender neutralization, and reference source; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-01.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01.1-01. Declaration of policy. The purpose of this chapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs or projects undertaken by a state agency so that displaced persons will not suffer disproportionate injuries as a result of programs and projects designed for the benefit of the public as a whole and to minimize the hardship of displacement by the acquisition of real property by state and local land acquisition programs, by federally assisted building code enforcement programs, or by a program of voluntary rehabilitation of buildings or other improvements conducted pursuant to governmental supervision. The policy shall be uniform as to:

1. Relocation payment;
2. Advisory assistance;
3. Assurance of availability of standard housing; and
4. State reimbursement for local relocation payments under state-assisted and local programs.

SECTION 2. AMENDMENT. Section 54-01.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01.1-02. Definitions. As used in this chapter:

1. "Agency" means any department, agency, or instrumentality of the state or of a political subdivision of the state or any department, agency, or instrumentality of two or more political subdivisions of the state.

- 2- "Business" means any lawful activity, excepting a farm operation, conducted primarily:
- For the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;
 - For the sale of services to the public;
 - By a nonprofit organization; or
 - For the purposes of subsection 1 of section 54-01.1-03, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above-mentioned activities are conducted.
2. "Comparable replacement dwelling" means any dwelling that is:
- Decent, safe, and sanitary;
 - Adequate in size to accommodate the occupants;
 - Within the financial means of the displaced person;
 - Functionally equivalent;
 - In the area not subject to reasonably adverse environmental conditions; and
 - In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.
3. "Displacing agency" means the state, state agency, or person carrying out a federal or state financially assisted program or project that causes a person to be a displaced person.
- 3- 4. "Displaced person", except as provided in subdivision c, means any person who, on or after July 1, 1973, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by an agency; and solely for the purposes of subsections 1 and 2 of section 54-01.1-03 and section 54-01.1-06, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project:
- Any person who moves from real property, or moves the person's personal property from real property:

- (1) As a direct result of a written notice of intent to acquire or the acquisition of the real property in whole or in part for a program or project undertaken by a displacing agency; or
 - (2) On which the person is a residential tenant or conducts a small business, a farm operation, or a business defined in subdivision d of subsection 1, as a direct result of rehabilitation, demolition, or other displacing activity the state agency prescribes, under a program or project undertaken by a displacing agency in any case in which the displacing agency determines that the displacement is permanent.
 - b. Solely for the purposes of subsections 1 and 2 of section 54-01.1-03 and section 54-01.1-06, any person who moves from real property, or moves the person's personal property from real property:
 - (1) As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by a displacing agency; or
 - (2) As a direct result of rehabilitation, demolition, or other displacing activity the state agency prescribes, of other real property on which the person conducts a business or a farm operation, under a program or project undertaken by a displacing agency where the displacing agency determines that the displacement is permanent.
 - c. The term "displaced person" does not include:
 - (1) A person who has been determined, according to criteria established by the state agency, to be either unlawfully occupying the displacement dwelling or to have occupied the dwelling for the purpose of obtaining assistance under this chapter; or
 - (2) In any case in which the displacing agency acquires property for a program or project, any person, other than a person who was an occupant of such property at the time it was acquired, who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

4- 5. "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

5- 6. "Federally assisted" means receiving federal financial assistance in the form of a grant, loan, or contribution, except any federal guarantee or insurance, or any interest reduction payment to an

individual in connection with the purchase and occupancy of a residence by that individual.

- ~~6-~~ 7. "Mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the state in which the real property is located, together with the credit instruments, if any, secured thereby.
8. "Nonprofit organization" means a corporation organized under the North Dakota Nonprofit Corporation Act, chapters 10-24 through 10-28, or an organization defined in subsection 7, 8, 9, 10, or 11 of section 57-02-08.
- ~~7-~~ 9. "Person" means any individual, partnership, corporation, or association.
10. "State agency" means any department, agency, or instrumentality of the state or of a political subdivision of the state, any department, agency, or instrumentality of two or more states, or two or more political subdivisions of the state, or states, and any person who has the authority to acquire property by eminent domain under state law.

SECTION 3. AMENDMENT. Section 54-01.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01.1-03. Moving and related expenses.

1. If an agency acquires real property for public use, it shall make fair and reasonable relocation payments to displaced persons and businesses as required by this chapter for Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the displacing agency shall provide for the payment to the displaced person of:
 - a. Actual, reasonable expenses in moving himself, his family, business, farm operation, or other personal property;
 - b. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the state agency; and
 - c. Actual, reasonable expenses in searching for a replacement business or farm; and
 - d. Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, but not to exceed ten thousand dollars.
2. Any displaced person eligible for payments under subsection 1 who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection 1 may receive a moving expense allowance, determined according to a schedule established by the state agency, ~~not to~~

exceed three hundred dollars; and a dislocation allowance of two hundred dollars.

3. Any displaced person eligible for payments under subsection 1, who is displaced from his the person's place of business or from his farm operation and who elects and is eligible under criteria established by the state agency, may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection 1; may receive. Such payment shall consist of a fixed payment in an amount equal to the average annual net earnings of the business or farm operation to be determined according to criteria established by the state agency, except that the payment shall not be less than two one thousand five hundred dollars, nor more than ten twenty thousand dollars. In the case of a business, no payment shall be made under this subsection unless the agency is satisfied that the business:

- a. Cannot be relocated without a substantial loss of its existing patronage; and
- b. Is not a part of a commercial enterprise having at least one other establishment not being acquired by the agency, which is engaged in the same or similar business.

For purposes of this subsection, the term "average annual net earnings" means one-half of any net earnings of the business or farm operation before federal and state income taxes during the two taxable years immediately preceding the taxable year in which the business or farm operation moves from the real property acquired for the project; or during such other period as the agency determines to be more equitable for establishing the earnings; and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. A person whose sole business at the displacement dwelling is the rental of the property to others does not qualify for a payment under this subsection.

SECTION 4. AMENDMENT. Section 54-01.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01.1-04. Replacement housing for homeowners.

1. In addition to payments otherwise authorized by this chapter, the displacing agency shall make an additional payment not in excess of fifteen thousand twenty-two thousand five hundred dollars to any displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of the property. The additional payment shall include the following elements:
 - a. The amount, if any, which, when added to the acquisition cost of the dwelling acquired, equals the reasonable cost of a comparable replacement dwelling which is a decent, safer, and sanitary dwelling adequate to accommodate such displaced person; reasonably accessible to public services and places of employment; and available on the private market. All

determinations required to carry out this subdivision shall be determined by regulations issued pursuant to section 54-01.1-08;

- b. The amount, if any, which will compensate the displaced person for any increased interest costs and other debt service costs which the person is required to pay for financing the acquisition of a comparable replacement dwelling. The amount shall be paid only if the dwelling acquired was encumbered by a bona fide mortgage which was a valid lien on the dwelling for not less than one hundred eighty days prior to the initiation of negotiations for the acquisition of the dwelling. The amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling over the remainder term of the mortgage on the acquired dwelling reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located as determined by the agency; and
 - c. Reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.
2. The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a decent, safe, and sanitary replacement dwelling which is decent, safe, and sanitary not later than the end of the one-year period beginning on within one year after the date on which he receives final payment of all costs of from the displacing agency for the acquired dwelling or on the date on which he moves from the acquired dwelling the displacing agency's obligation under section 54-01.1-07 is met, whichever is the later date, except that the displacing agency may extend the period for good cause. If the period is extended, the payment under this section must be based on the costs of relocating the person to a comparable replacement dwelling within one year of such date.

SECTION 5. AMENDMENT. Section 54-01.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01.1-05. Replacement housing for tenants and certain others.

1. In addition to amounts otherwise authorized by this chapter, ~~an~~ a displacing agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 54-01.1-04, which dwelling was actually and lawfully occupied by the displaced person for not less than ninety days prior to ~~the~~:
- a. The initiation of negotiations for acquisition of such dwelling. The payment shall be either;or

- 1- The amount necessary to enable the displaced person to lease or rent; for a period not to exceed four years; a decent, safe, and sanitary dwelling of standards adequate to accommodate the person in areas not generally less desirable in regard to public utilities and public and commercial facilities; and reasonably accessible to his place of employment; but not to exceed four thousand dollars; or
 - 2- The amount necessary to enable the person to make a down payment (including incidental expenses described in subdivision c of subsection 1 of section 54-01.1-04) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities; but not to exceed four thousand dollars; except that if the amount exceeds two thousand dollars, the person must equally match any amounts in excess of two thousand dollars; in making the down payment
- b. In any case in which displacement is not a direct result of acquisition, such other event as the state agency may prescribe.

The payment must consist of the amount necessary to enable the person to lease or rent for a period not to exceed forty-two months, a comparable replacement dwelling, but not to exceed five thousand two hundred fifty dollars. At the discretion of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling must take into account such person's income.

2. Any person eligible for a payment under subsection 1 may elect to apply the payment to a down payment on, and other incidental expenses pursuant to, the purchase of a decent, safe, and sanitary replacement dwelling. At the discretion of the displacing agency, any such person may be eligible under this subsection for the maximum payment allowed under subsection 1, except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least ninety days but not more than one hundred eighty days immediately prior to the initiation of negotiations for the acquisition of the dwelling, the payment may not exceed the payment the person would otherwise have received under subsection 1 of section 54-01.1-04 had the person owned and occupied the displacement dwelling one hundred eighty days immediately prior to the initiation of such negotiations.

SECTION 6. AMENDMENT. Section 54-01.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01.1-06. Relocation assistance advisory programs.

1. Whenever the acquisition of real property for a program or project undertaken by an a displacing agency will result in the displacement of any person on or after July 1, 1973, the displacing agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services prescribed in subsection 2. If the displacing agency determines that any person

occupying property immediately adjacent to the ~~real~~ property ~~acquired~~ where the displacing activity occurs is caused substantial economic injury because of the acquisition, it may offer the person relocation advisory services under the program.

2. Each relocation assistance program required by subsection 1 shall include such measures, facilities, or services as may be necessary or appropriate in order:
 - a. To determine, and make timely recommendations on, the needs of displaced persons, ~~business concerns, and nonprofit organizations~~ for relocation assistance;
 - b. To assist owners of displaced businesses and farm operations in obtaining and becoming established in suitable business locations or replacement farms;
 - c. To supply ~~information~~:
 - (1) Information concerning programs of the federal, state, and local governments offering assistance to displaced persons and business concerns; and
 - (2) Technical assistance to such persons in applying for assistance under such programs.
 - d. To assist in minimizing hardships to displaced persons in adjusting to relocation; ~~and~~
 - e. To secure, to the greatest extent practicable, the coordination of relocation activities with other project activities and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of the relocation program; ~~and~~
 - f. To provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations.
3. Programs or projects undertaken by a displacing agency must be planned in a manner that:
 - a. Recognizes, at an early stage in the planning of such programs or projects and before the commencement of any actions that will cause displacements, the problems associated with the displacement of individuals, families, businesses, and farm operations, and
 - b. Provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.
4. Notwithstanding subsection 4 of section 54-01.1-02, in any case in which a displacing agency acquires property for a program or project, any person who occupies that property on a rental basis, for a short term or a period subject to termination when the

property is needed for the program or project, is eligible for advisory services to the extent determined by the displacing agency.

SECTION 7. AMENDMENT. Section 54-01.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01.1-07. Assurance of availability of standard housing. Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person on or after July 1, 1975, the agency shall assure that, within a reasonable period of time prior to displacement, there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings equal in number to the number of and available to displaced persons who require dwellings and reasonably accessible to their places of employment, except that regulations issued pursuant to section 54-01.1-08 may prescribe situations when these assurances may be waived.

1. If a program or project undertaken by a displacing agency cannot proceed on a timely basis because comparable replacement dwellings are not available, and the head of the displacing agency determines that such dwellings cannot otherwise be made available, the head of the displacing agency may take such action as is necessary or appropriate to provide such dwellings by use of funds authorized for such project. The displacing agency may use this section to exceed the maximum amounts that may be paid under sections 54-01.1-04 and 54-01.1-05 on a case-by-case basis for good cause as determined in accordance with section 54-01.1-08 regulations issued by the state agency.
2. No person may be required to move from a dwelling on account of any program or project undertaken by the displacing agency unless the displacing agency is satisfied that comparable replacement housing is available to the person.
3. The displacing agency shall assure that a person will not be required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in the case of:
 - a. A major disaster as defined in section 102(2) of the Federal Disaster Relief Act of 1974;
 - b. A national emergency declared by the president; or
 - c. Any other emergency that requires the person to move immediately from the dwelling because continued occupancy of the dwelling by the person constitutes a substantial danger to the health or safety of the person.

SECTION 8. AMENDMENT. Section 54-01.1-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01.1-08. ~~Promulgation of rules and regulations. The head of each state agency shall consult, and other State agencies may consult, with the office of intergovernmental assistance on the establishment of to establish regulations and procedures for implementation of the provisions of this chapter. The head of each state agency, after consultation with the office of intergovernmental assistance, and the head or governing body of any other agency is authorized and to establish such regulations and procedures as he may determine to be necessary to assure:~~

1. That the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;
2. That a displaced person who makes proper application for a payment authorized by this chapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and
3. That any displaced person aggrieved by a determination as to eligibility for a payment, or as to the amount of a payment, may have ~~his~~ the application reviewed by the head or governing body of the state agency.

~~The head of an agency may prescribe other regulations and procedures, consistent with the provisions of this chapter, as he deems necessary or appropriate to carry out this chapter. All regulations and procedures established by state agencies shall be set forth in rules promulgated in the manner provided in chapter 26-32.~~

SECTION 9. AMENDMENT. Section 54-01.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01.1-09. Administration. In order to prevent unnecessary expense and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, the state agency may enter into contracts with any individual, firm, association, or corporation for services in connection with those programs, or may carry out its functions under this chapter through any federal agency or any department or instrumentality of the state or its political subdivisions having an established organization for conducting relocation assistance programs. The state agency shall, in carrying out relocation activities described in section 54-01.1-08, whenever practicable, utilize the services of state or local housing agencies, or other agencies having experience in the administration or conduct of similar housing assistance activities.

SECTION 10. AMENDMENT. Section 54-01.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01.1-10. Fund availability. Funds appropriated or otherwise available to any state agency for the acquisition of real property or any interest therein for a particular program or project shall also be available also for obligation and expenditure to carry out the provisions of this chapter as applied to that program or project. No payment or assistance under this chapter is required to be made to any person or included as a program or project cost under this section, if the person receives a payment required by federal, state, or local law which is determined by the state agency to have substantially the same purpose effect as the payment under this chapter.

SECTION 11. AMENDMENT. Section 54-01.1-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01.1-12. Displacement by federally assisted building code enforcement or by voluntary rehabilitation. A person who moves or discontinues ~~his~~ a business or moves other personal property, or moves from ~~his~~ a dwelling ~~on or after the effective date of this chapter~~ as the direct result of a federally assisted building code enforcement program, or of a program of rehabilitation of buildings conducted pursuant to a governmental program, is deemed to be a displaced person for the purposes of this chapter.

SECTION 12. AMENDMENT. Section 54-01.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-01.1-16. Real property acquisition policies. Any state agency engaged in a federally assisted program or project involving the acquisition of real property shall be guided, to the greatest extent practicable under state law, by the real property acquisition policies set forth in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [Pub. L. 91-646, 42 U.S.C. 4651 through 4654] and the 1987 amendments enacted in Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 [Pub. L. 100-17, 101 Stat. 255-256].

SECTION 13. EFFECTIVE DATE. This Act becomes effective on April 2, 1989.

SECTION 14. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 16, 1989
Filed March 16, 1989

CHAPTER 628

HOUSE BILL NO. 1671

(Trautman)

(Approved by the Committee on Delayed Bills)

STATE MARCH NAME

AN ACT to amend and reenact section 54-02-09 of the North Dakota Century Code, relating to the name of the state march.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-02-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-02-09. Adoption of North Dakota state march. *"Spirit of the Land"* *"Flickertail March"* as composed by Mr. James D. Ployhar is hereby designated ~~as~~ the North Dakota state march. The North Dakota state march ~~shall~~ must be played in a manner consistent with the respect and dignity due a state march and may be played at appropriate state functions.

Approved April 7, 1989
Filed April 7, 1989

CHAPTER 629

SENATE BILL NO. 2496
(Senators Mushik, W. Meyer)
(Representatives Ulmer, Gerl, Tokach)

STATE RAILROAD MUSEUM

AN ACT to designate the Mandan railroad museum as the North Dakota state railroad museum.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. State railroad museum. The Mandan railroad museum, established in 1972 in Mandan, is hereby designated the North Dakota state railroad museum. No state agency or institution may provide appropriated funds to the state railroad museum nor is the state responsible for any obligations of the museum.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 630

HOUSE BILL NO. 1660
(Stofferahn, R. Hausauer)
(Approved by the Committee on Delayed Bills)

LEGISLATIVE TRAVEL EXPENSES AND ASSISTANT LEADERS' COMPENSATION

AN ACT to amend and reenact sections 54-03-10 and 54-03-20 of the North Dakota Century Code, relating to compensation of assistant leaders and travel expense reimbursement for members of the legislative assembly; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-03-10. Compensation of speaker, majority and minority leaders, assistant majority and minority leaders, committee chairmen, and employees. The speaker of the house, the house majority leader, the senate majority leader, the house minority leader, and the senate minority leader shall each receive as compensation, in addition to any other compensation or expense reimbursement provided by law, the sum of ten dollars per day for each calendar day during any regular, special, or organizational session. Chairmen of the substantive standing committees, the house assistant majority leader, the senate assistant majority leader, the house assistant minority leader, and the senate assistant minority leader shall receive additional compensation of five dollars for each calendar day during any regular, special, or organizational session. The additional compensation provided by this section shall be paid in the manner provided in section 54-03-20. The legislative assembly, by concurrent resolution, shall fix the compensation of the other officers and employees elected or appointed. ~~The provisions of this section shall be retroactive to January 1, 1985.~~

* SECTION 2. AMENDMENT. Section 54-03-20 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly. Each member of the legislative assembly of the state of North Dakota is entitled to receive as compensation for services the sum of ninety dollars for each calendar day, and is entitled to receive reimbursement for lodging, which may not exceed a maximum of six hundred dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees ~~for travel by motor vehicle~~ with the additional limitation that reimbursement for travel by

* NOTE: Section 54-03-20 was also amended by section 1 of Senate Bill No. 2082, chapter 631.

common carrier may not exceed thirty-five cents per mile based upon air mileage. Members of the legislative assembly who do not receive reimbursement for lodging and who do not live in a legislative district completely or partially within the city of Bismarck are entitled to reimbursement at the rate provided for state employees for travel by motor vehicle for necessary travel for not to exceed one round trip taken per day between their residences and the place of meeting of the legislative assembly when it is in session, provided that this reimbursement may not exceed six hundred dollars per month. The amount to which each legislator is entitled shall be paid following the organizational session in December and following each month during a regular or special session.

A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session shall be included as a calendar day during a legislative session for the purposes of this section.

In addition, each member shall receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of one hundred eighty dollars a month, which is payable every six months. If a member dies or resigns from office during the member's term, the member shall be paid only the allowances provided for in this section for the period for which the member was actually a member.

Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances shall be excluded from gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)]. ~~The provisions of this section shall be retroactive to January 1, 1987.~~

SECTION 3. EFFECTIVE DATE. This Act is retroactively effective to January 1, 1989.

Approved April 15, 1989
Filed April 17, 1989

CHAPTER 631

SENATE BILL NO. 2082
(Senators Streibel, Olson)
(Representatives Kloubec, Schneider)

LEGISLATIVE EXPENSE REIMBURSEMENT OPTIONS

AN ACT to amend and reenact section 54-03-20 of the North Dakota Century Code, relating to optional meals reimbursement in lieu of a portion of compensation for members of the legislative assembly; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 54-03-20 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-03-20. Compensation and expense reimbursement of members of the legislative assembly. Each member of the legislative assembly of the state of North Dakota is entitled to receive as compensation for services the sum of ninety dollars for each calendar day, ~~and during any organizational, special, or regular legislative session.~~ Each member of the legislative assembly whose home is ten miles or more from the capitol may make an election once during each organizational, special, or regular legislative session, binding for the remainder of the legislative session, to receive as compensation for services the sum of seventy-three dollars for each calendar day and to receive expense reimbursement for meals upon claims as provided in section 44-08-04. Each member of the legislative assembly is entitled to receive reimbursement for lodging, which may not exceed a maximum of six hundred dollars per calendar month for lodging in state, at the rates and in the manner provided in section 44-08-04 for each calendar day during the period of any organizational, special, or regular session. Members of the legislative assembly who receive reimbursement for lodging are also entitled to reimbursement for travel for not to exceed one round trip taken during any calendar week, or portion of a week, the legislative assembly is in session, between their residences and the place of meeting of the legislative assembly, at the rate provided for state employees for travel by motor vehicle. Members of the legislative assembly who do not receive reimbursement for lodging and who do not live in a legislative district completely or partially within the city of Bismarck are entitled to reimbursement at the rate provided for state employees for travel by motor vehicle for necessary travel for not to exceed one round trip taken per day between their residences and the place of meeting of the legislative assembly when it is in session, provided that this reimbursement may not exceed six hundred dollars per month. The amount to which each legislator is entitled shall be paid following the organizational session in December and following each month during a regular or special session.

A day, or portion of a day, spent in traveling to or returning from an organizational, special, or regular session shall be included as a calendar day during a legislative session for the purposes of this section.

* NOTE: Section 54-03-20 was also amended by section 2 of House Bill No. 1660, chapter 630.

In addition, each member shall receive during the term for which the member was elected, as compensation for the execution of public duties during the biennium, the sum of one hundred eighty dollars a month, which is payable every six months. Each member of the legislative assembly may make an election, binding for the legislator's term of office, to receive the one hundred eighty dollars a month as reimbursement for uncompensated expenses, rather than as compensation. If a member dies or resigns from office during the member's term, the member shall be paid only the allowances provided for in this section for the period for which the member was actually a member.

Attendance at any organizational, special, or regular session of the legislative assembly by any member is a conclusive presumption of entitlement as set out in this section and compensation and expense allowances shall be excluded from gross income for income tax purposes to the extent permitted for federal income tax purposes under section 127 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34; 95 Stat. 202; 26 U.S.C. 162(i)]. ~~The provisions of this section shall be retroactive to January 1, 1987.~~

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved February 1, 1989
Filed February 1, 1989

CHAPTER 632

HOUSE BILL NO. 1529
(Representatives Wilkie, P. DeMers, Myrdal)
(Senators David, O'Connell, Yockim)

LEGISLATIVE ORGANIZATIONAL SESSION

AN ACT to amend and reenact sections 54-03.1-03 and 54-44.1-07 of the North Dakota Century Code, relating to the organizational session agenda and presentation of the executive budget.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-03.1-03. Agenda. The agenda of the organizational session shall include, but not be limited to, the following:

1. Orientation classes upon legislative rules and procedure for new legislators;
2. Presentation of reports by legislative interim boards or committees;
3. Party caucuses to determine which party has a majority in each house of the legislative assembly and thereafter proceed to select party nominees for officers of each body;
4. Appointment of employment committees to process applications for positions of employment with the legislative assembly and make recommendation for hiring the selected employees;
5. Appointment of a senate committee on committees;
6. Each legislator shall present ~~his~~ the legislator's committee appointment preferences to the speaker of the majority party or the chairman of the interim senate committee on committees; ~~and~~
7. Presentation of the budget and revenue proposals recommended by the governor as provided in section 54-44.1-07; and
8. All other similar matters, in order that the legislative assembly be fully organized and ready to begin its business by the first day of the regular session.

SECTION 2. AMENDMENT. Section 54-44.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.1-07. Presentation of budget data - How presented to the legislative assembly. The director of the budget or ~~his~~ the director's

designated subordinate shall present the budget data information in section 54-44.1-06, including the budget and revenue proposals recommended by the governor, and make available sufficient copies thereof to the budget section of the legislative council assembly at the organizational session. The budget data shall be completed and made available to the budget section of the legislative council, or its designee, assembly in such form as may be acceptable to it by December first of each year next preceding the session of prescribed by the legislative assembly, or at such later date as may be set by the budget section chairman council. The chairman of the budget section legislative council shall set the time and place at which such budget data is to be presented.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 633

HOUSE BILL NO. 1105
(Committee on State and Federal Government)
(At the request of the State Auditor)

STATE AGENCIES' ACCOUNTS

AN ACT to amend and reenact section 54-06-08.1 of the North Dakota Century Code, relating to petty cash funds and bank accounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-06-08.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-06-08.1. Cash balances maintained by state agencies ~~collecting money~~ - Petty cash funds - Bank accounts. All departments, institutions, or agencies of the state ~~that collect money which is required to be paid over to the state treasurer~~ may, subject to approval of the director of the office of management and budget, the state auditor, and the state treasurer, maintain such reasonable minimum balance as may be necessary for clearing or cashing of checks and making change. Such departments are hereby authorized, subject to approval of the director of the office of management and budget, the state auditor, and the state treasurer, to maintain minimum petty cash funds and may establish bank accounts in the Bank of North Dakota. It is not the intent hereof to deny to any state institution or agency located outside of Bismarck the right to establish bank accounts in other state or federally chartered banks.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 634

SENATE BILL NO. 2520

(Satrom)

(Approved by the Committee on Delayed Bills)

STATE EMPLOYEE UNUSED SICK LEAVE PAYMENT

AN ACT to amend and reenact section 54-06-14 of the North Dakota Century Code, relating to partial payment of accrued sick leave to state employees at retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-06-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-06-14. Annual leave and sick leave for state employees ~~to be provided~~. Annual leave and sick leave ~~shall must~~ be provided for all persons in the permanent employment of this state who are not employed under a written contract of hire setting forth the terms and conditions of their employment, within the limitations, terms, and provisions of this section. Annual leave for an employee entitled ~~thereto shall~~ to it ~~must~~ be within a range of a minimum of one working day per month of employment to a maximum of two working days per month of employment, based on tenure of employment, to be fixed by rules and regulations adopted by the employing unit. Sick leave for an employee entitled ~~thereto shall~~ to it ~~must~~ be within a range of a minimum of one working day per month of employment to a maximum of one and one-half working days per month of employment, based on tenure of employment, to be fixed by rules and regulations adopted by the employing unit. Annual leave ~~shall must~~ be compensated for on the basis of full pay for the number of working days' leave credited to the employee. Sick leave ~~shall must~~ be compensated for on the basis of full pay for absence due to illness on working days during tenure of employment. An employee who accepts a retirement allowance under chapter 39-03.1, 54-52, 15-39.1, or under the alternative retirement program provided by the state board of higher education, is entitled at the time of retirement to a lump-sum payment equal to one-tenth of the pay attributed to the employee's unused sick leave accrued under this section. The pay attributed to the accumulated, unused sick leave must be computed on the basis of the employee's salary or wage at the time the employee retires from employment with the state and at the rate of one hour of pay for each hour of unused sick leave. The agency, unit, or entity that last employed the employee prior to retirement shall make the lump-sum payment from funds appropriated by the legislative assembly to that agency, unit, or entity for salaries and wages. Any state agency, unit, or entity which has such employee or employees is authorized and directed to employs persons subject to this section shall formulate and adopt such rules and regulations governing the granting of annual leave and sick leave as which will effectuate the purpose of this section and best suit the factors of employment of that particular employing unit. Each employing unit, upon passage of this section, shall file with the office of management and budget a copy of the rules and regulations adopted. Thereafter, including any amendments or additions thereto shall also be so filed to the rules.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 635

SENATE BILL NO. 2410
(Senators Waldera, Mushik, Holmberg)
(Representatives Scherber, Rydell, Wentz)

BOARDS AND COMMISSIONS GENDER BALANCE

AN ACT to provide gender balance in the appointment of members of state boards, commissions, committees, and councils; and to amend and reenact sections 15-39.1-05 and 23-14-04 of the North Dakota Century Code, relating to the appointment of members of the board of trustees of the teachers' fund for retirement and district boards of health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Appointive boards, commissions, committees, and councils - Gender balance. Appointments to boards, commissions, committees, and councils of the state established by this code, if not otherwise provided by law, should be gender balanced to the extent possible and to the extent that appointees are qualified to serve on those boards, commissions, committees, and councils. Any appointment in accordance with this section should be made in a manner that strives to seek gender balance based on the numbers of each gender belonging to the group from which appointments are made. Ex officio members are not to be included in determining gender balance under this section.

* SECTION 2. AMENDMENT. Section 15-39.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-05. Management of fund. The fund ~~shall~~ must be managed by a board of trustees, which shall consist of the state treasurer, the superintendent of public instruction, and three persons to be appointed by the governor. ~~One of the appointees shall be a woman and a~~ A majority of the board ~~shall~~ must at all times consist of persons who are members of the fund. The term of the office of the appointees ~~shall be~~ is three years with ~~said~~ those terms fixed to terminate on June thirtieth of alternate years. The term of each appointee shall commence on July first next succeeding ~~his~~ the appointee's appointment.

** SECTION 3. AMENDMENT. Section 23-14-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-14-04. District board of health. A district health unit ~~shall~~ must be organized by the appointment of a district board of health to consist of not less than five members, one of whom ~~shall~~ must be a physician, one a dentist, one a business or professional person, one a farmer, and one additional person, who ~~shall~~ must be appointed for terms as follows: One for one year, one for two years, one for three years, one for four years, and one for five years. All subsequent appointments ~~shall~~ must be for a term of five years. ~~In no instance shall the board be either all male or all female.~~ Each appointee shall serve until ~~his~~ the appointee's successor is appointed

* NOTE: Section 15-39.1-05 was also amended by section 1 of House Bill No. 1371, chapter 219.

** NOTE: Section 23-14-04 was also amended by section 26 of Senate Bill No. 2200, chapter 301.

and qualified, and if a vacancy occurs, the vacancy ~~shall~~ must be filled by appointing for the remainder of the unexpired term. Each appointee shall qualify by filing the constitutional oath of office, and in case of a district health unit, such oath ~~shall~~ must be filed in the office of the county auditor of the county having the larger population according to the most recent state or federal census. Each county in the district shall have at least one representative on the district board of health and counties of over fifteen thousand population shall have an additional representative for each fifteen thousand population or fraction thereof. In district units of less than five counties, each county shall have at least one representative on the district board of health and the additional representatives selected to constitute the minimum five-member board ~~shall~~ must be equitably apportioned among the counties on a population basis. In a city-county health district comprised of only one county and having a city or cities of fifteen thousand population or more, each city having a population of fifteen thousand or more shall have a representative on the district board of health for each fifteen thousand population or fraction thereof and the remaining population of the county, exclusive of the populations of cities with fifteen thousand population or more each, shall have a representative on the district board of health for each fifteen thousand population or fraction thereof. Members of the board may be compensated at the rate not to exceed forty-five dollars per day and not to exceed twenty-five days in any one year. ~~They~~ ~~shall~~ and must be reimbursed for expenses incurred in the manner and to the extent provided for state officers.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 636

SENATE BILL NO. 2519

(Heigaard)

(Approved by the Committee on Delayed Bills)

DOCUMENT TRANSMISSION FEE

AN ACT to create and enact a new subsection to section 54-09-04 of the North Dakota Century Code, relating to the fee charged by the secretary of state for sending documents by electronic transmission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-09-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

For sending a copy of a document by electronic transmission, one dollar for each page.

Approved March 28, 1989

Filed March 28, 1989

CHAPTER 637

HOUSE BILL NO. 1488
(Representatives Laughlin, Kingsbury, Gunsch)
(Senator Wogsland)

AUDITOR CHARGE WAIVER

AN ACT to amend and reenact subsection 2 of section 54-10-01 of the North Dakota Century Code, relating to the waiver of charges by the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 54-10-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Be vested with the duties, powers, and responsibilities involved in making a complete examination once every two years of the books, records, accounting methods, and internal controls of any and all state agencies, including the occupational and professional boards provided for in title 43 and the state bar board, state board of veterinary medical examiners, and all other professional boards created by law. The state auditor shall charge an amount equal to the fair value of the audit and other services rendered plus actual costs incurred by the state auditor to all agencies ~~which that~~ receive and expend moneys from other than the general fund; ~~unless for good cause the amounts charged are waived by the auditor for a one-year period of time with the waiver subject to annual renewal after proper application has been filed with the auditor.~~ The governing board of any occupational and professional board or commission shall provide for an audit once every two years by a certified public accountant or licensed public accountant who shall submit the audit report to the state auditor's office. When the report is in the form and style as prescribed by the state auditor, the state auditor may not audit such board or commission. Audits may be conducted at more frequent intervals if requested by the governor or legislative audit and fiscal review committee.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 638

HOUSE BILL NO. 1115
(Committee on Transportation)
(At the request of the State Auditor)

HIGHWAY DEPARTMENT AUDITS

AN ACT to amend and reenact section 54-10-12 of the North Dakota Century Code, relating to the checking of perpetual physical property inventory of the state highway department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-10-12. Highway department property. The state auditor shall be responsible for a spot check of the perpetual physical property inventory of the state highway department, during the audit process, and the costs thereof shall be paid from the state highway fund, and such cost shall not exceed five thousand dollars ~~annually~~ per audit.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 639

SENATE BILL NO. 2152
(Committee on Political Subdivisions)
(At the request of the State Auditor)

POLITICAL SUBDIVISION AUDIT REQUESTS

AN ACT to amend and reenact sections 54-10-14 and 54-10-15 of the North Dakota Century Code, relating to the requirements for requesting a state audit by petition or at the request of the chairman of the board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-10-14. Political subdivisions - Audits - Fees - Alternative audits and reports. The state auditor, by ~~his~~ the duly appointed deputy auditors or other authorized agents, shall audit once every two years, except as provided in this section or otherwise by law, the official financial records, accounts, and proceedings of the following governing bodies and officials of the following political subdivisions:

1. Counties.
2. ~~Municipalities~~ Cities.
3. Park districts.
4. School districts.
5. Firemen's relief associations.
6. Airport authorities.
7. Public libraries.
8. Water resource districts.
9. Garrison Diversion Conservancy District.
10. Rural fire protection districts.
11. Special education districts.
12. Vocational education centers.
13. Correction centers.
14. Recreation service districts.

15. Weed boards.
16. Irrigation districts.

The state auditor may in lieu of conducting an audit every two years require annual reports from school districts with less than one hundred enrolled students, municipalities with less than three hundred population, and other political subdivisions subject to the provisions of this section, or otherwise provided by law, with less than fifty thousand dollars of annual receipts. The reports must contain such financial information as the state auditor may request. The state auditor may also make such additional examination or audit as he deems deemed necessary in addition to such the report. When a report is required in lieu of an audit, the state auditor upon receiving a petition containing the signatures of not less than ten percent of the qualified electors of the political subdivision voting for the office of governor at the preceding general election, shall conduct an audit of such political subdivision's books, records, and financial accounts.

The governing board of any political subdivision may provide for an audit by a certified public accountant or licensed public accountant, and such report must be in such form and contain such information as the state auditor may require in addition to other information, and in such case then the state auditor is not required to make the examination provided for in this section. The report must be in the form and content required by the state auditor. The number of copies as of the audit report requested by the state auditor of such audit reports must be filed with the state auditor by the certified public accountant or licensed public accountant making such performing the audit at the time that when the report of audit report is delivered to said the political subdivisions, and the subdivision. The governing board of such the subdivision may shall not pay the audit fee for such audit until evidence of such the filing is furnished. The state auditor may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing boards and officers of such the subdivisions disclosed by such the audit reports, and failure to make such the corrections shall result in audits being resumed by the state auditor until such the irregularities, procedures, or illegal actions are corrected and fees for such the audits, so resumed, are paid in accordance with this section. The state auditor shall charge an amount equal to the fair value of the audit and other services rendered plus actual costs incurred by the state auditor to the political subdivisions subdivision in preparing the audit report. All fees for the audits performed by the state auditor must be paid by the subdivision audited to the state treasurer and credited to the general fund of the state.

SECTION 2. AMENDMENT. Section 54-10-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-10-15. Audits of municipal agencies and school districts political subdivisions by order of governor or upon petition. When so ordered by the governor of this state, or on petition of thirty-five percent of the qualified electors of any school district or city for which audits are not provided in section 54-10-14, or at the request of the chairman or governing board of any such political subdivision, the The state auditor shall, through his, by duly appointed deputy auditors or other authorized persons, agents, shall audit the records of the governing body and the books, records, and financial accounts of the business manager or auditor thereof, as the case may be any political subdivision when ordered by the governor, requested by

the governing board, or upon petition of at least thirty-five percent of the qualified electors of any political subdivision enumerated in section 54-10-14 voting for the office of governor at the preceding general election or, in the case of school districts, upon petition of at least thirty-five percent of the qualified electors voting at the preceding school board election. Fees for ~~such~~ the audits shall be paid in accordance with the provisions of section 54-10-14 ~~to the state treasurer, and by him credited to the general fund of the state.~~

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 640

HOUSE BILL NO. 1126
(Committee on Judiciary)
(At the request of the Attorney General)

ASSETS FORFEITURE FUND

AN ACT to amend and reenact section 54-12-14 of the North Dakota Century Code, relating to the assets forfeiture fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-12-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-12-14. Assets forfeiture fund - Created - Purpose - Continuing appropriation. There is hereby created a fund to be known as the attorney general assets forfeiture fund. The fund consists of funds appropriated by the legislative assembly and additional funds obtained from moneys, assets, and proceeds seized and forfeited pursuant to section 19-03.1-36 and amounts remaining from the forfeiture of property after the payment of expenses for forfeiture and sale authorized by law. The total aggregate amount in the fund may not exceed five hundred thousand dollars and at the end of each fiscal year any moneys in excess of that amount must be deposited in the general fund. Subject to legislative appropriation, the The funds must be made available are appropriated, as a standing and continuing appropriation, to the attorney general for the following purposes:

1. For obtaining evidence for enforcement of any state criminal law or law relating to the control of drug abuse.
2. For paying, at the discretion of the attorney general, awards for information or assistance leading to a forfeiture under section 19-03.1-36.
3. For paying, at the discretion of the attorney general, any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to section 19-03.1-36, or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property.
4. For equipping for law enforcement functions forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the state controlled substances board or a law enforcement agency.
5. For paying, at the discretion of the attorney general, overtime compensation to agents of the bureau of criminal investigation and drug enforcement unit incurred as a result of investigations of violations of chapter 19-03.1.

6. For paying matching funds required to be paid as a condition for receipt of funds from a federal government program awarding monetary grants or assistance for the investigation, apprehension, or prosecution of persons violating the provisions of chapter 19-03.1.

The attorney general shall, with the concurrence of the director of the office of management and budget, establish the necessary accounting procedures for the use of such fund, and shall personally approve, in writing, all requests from the chief of the bureau of criminal investigation or the director of the drug enforcement unit for the use of said fund and shall be accountable to the legislative council, upon request, for the expenditure thereof.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 641

HOUSE BILL NO. 1141
(Committee on Industry, Business and Labor)
(At the request of the Attorney General)

ATTORNEY GENERAL REFUND FUND

AN ACT to create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to the establishment of a fund in the state treasury to provide for the deposit of funds in cases where the consumer fraud division acts in a receivership capacity or otherwise provides refunds to consumers of amounts paid by persons or parties found to have violated the consumer fraud laws, for the payment of valid claims against cash deposit bonds posted by applicants for a transient merchant's license, and for the refund to the licensee of any remaining balance of the cash deposit bond posted by an applicant for a transient merchant's license; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

Special fund established - Continuing appropriation. A special fund is established in the state treasury and designated as the attorney general refund fund. The attorney general shall deposit all moneys recovered by the consumer fraud division for refunds to consumers in cases where persons or parties are found to have violated the consumer fraud laws and all cash deposit bonds paid by applicants for a transient merchant's license who do not provide a surety bond. The moneys in the fund are appropriated, as necessary, for the following purposes:

1. To provide refunds of moneys recovered by the consumer fraud and antitrust division on behalf of consumers;
2. To pay valid claims against cash deposit bonds posted by transient merchant licensees; and
3. To refund, upon expiration of the two-year period after the expiration of the transient merchant's license, the balance of any cash deposit bond remaining after the payment of valid claims.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 642

HOUSE BILL NO. 1632
(Representatives Kaldor, Huether)
(Senator Stromme)

INFORMATION SERVICES DIVISION

AN ACT to create and enact two new sections to chapter 54-44.2 of the North Dakota Century Code, relating to the capitol telephone exchange and wide area telephone service; to amend and reenact section 54-16-11.1, subsections 3 and 5 of section 54-44-11, and sections 54-44.2-01, 54-44.2-02, 54-44.2-02.1, 54-44.2-02.2, 54-44.2-04, 54-44.2-06, and 54-44.2-07 of the North Dakota Century Code, relating to the redesignation of the office of central data processing as the information services division; and to repeal chapter 48-07 of the North Dakota Century Code, relating to the capitol telephone exchange and wide area telephone service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 54-16-11.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-16-11.1. Emergency commission may increase revenues and appropriation authority for intergovernmental service fund agencies. Upon presentation of the verified petition provided for in section 54-16-10, the emergency commission shall meet to determine if additional demand from state agencies requires an increase in appropriation authority and revenue receipts for intergovernmental service agencies. Such agencies are limited to the information services division, central duplicating, ~~central data processing~~, ~~state communications~~, surplus property, and central microfilm.

SECTION 2. AMENDMENT. Subsections 3 and 5 of section 54-44-11 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. The office of management and budget shall establish a state ~~central data processing~~ information services operating fund to be used for the procurement and maintenance of data processing equipment and supplies and telecommunications equipment and supplies and for providing data processing and telecommunication services to state departments and agencies.
5. Each office, agency, or institution provided with purchasing, printing, data processing information services, or personnel training services, unless exempted by law, shall pay to the office of management and budget a proportionate share of the cost of such service as determined by the director of the office of management and budget, based on actual costs and actual usage. The amounts paid to the office of management and budget by the various offices,

* NOTE: Section 54-16-11.1 was also amended by section 4 of Senate Bill No. 2022, chapter 51.

agencies, and institutions shall be deposited in the appropriate operating fund and shall be expended in accordance with legislative appropriations.

SECTION 3. AMENDMENT. Section 54-44.2-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.2-01. Office of central data processing Information services division - Creation. The office of central data processing information services division is hereby established in the office of management and budget. The director of the office of management and budget shall appoint a director of central data processing the information services division. The director of central data processing the information services division shall supervise and regulate electronic data processing activities of all of the executive branch state agencies, institutions, departments, and boards, except the job service North Dakota and the office of the adjutant general. The office of central data processing division shall establish an electronic data processing center which ~~shall~~ must, unless excepted by the director, be used by all executive branch state agencies, departments, and institutions except the institutions under the control of the board of higher education, the job service North Dakota, and the office of the adjutant general. The office of central data processing division shall provide data processing services to the legislative and judicial branches of government. If the office of central data processing division is unable to fulfill a request for service from the legislative or judicial branch of government, the service may be procured by the legislative or judicial branch within the limits of legislative appropriations.

The director of central data processing shall the information services division must be appointed upon the basis of education, experience, and other qualifications in data processing and administration, without reference to partisan politics, and ~~shall~~ must serve at the pleasure of the director of the office of management and budget. The director of central data processing the information services division shall employ such other professional, technical, and clerical personnel as ~~he may deem~~ the director determines to be necessary to carry out the duties prescribed in this chapter and shall, within the limits of the legislative appropriation, fix the salaries of all employees within the office of central data processing division. All personnel within the office of central data processing shall division must be allowed their actual and necessary travel expenses at the same rate as for other employees of the state.

SECTION 4. AMENDMENT. Section 54-44.2-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.2-02. Office of central data processing Information services division - Powers and duties. The office of central data processing information services division shall:

1. Provide systems design, programming, and other data processing services.
2. Design, plan, justify, and implement all data processing systems within and between state agencies ~~which~~ that utilize the services of the office of central data processing division.

3. Have the authority to purchase or lease such additional equipment or replace, including by trade or resale, present equipment as may be necessary to carry out ~~the provisions of~~ this chapter. Each executive branch department, agency, or institution, except the institutions under the control of the board of higher education, the job service North Dakota, and the office of adjutant general, shall submit to the director of central data processing the division for approval or disapproval a written request for data processing services ~~which that~~ require new data processing applications. A request ~~shall~~ must also be submitted for modifications to existing data processing applications which are expected to increase the cost of operating such data processing applications by more than fifteen percent. The director of ~~central data processing~~ may approve or disapprove the lease, purchase, or other contractual acquisition of additional or new electronic data processing services or equipment by executive branch agencies, except the institutions under the control of the board of higher education, the job service North Dakota, and the office of adjutant general. The director of central data processing may authorize a user agency to house and operate electronic data processing equipment.
4. Provide data processing assistance and advisory service to the legislative, executive, and judicial branches.
5. Establish and justify data processing activities and costs in order that effectiveness can be measured.
6. Establish a data bank to eliminate the duplicate storage of common data and thereby develop more economical and efficient use of the data processing system. The data bank ~~shall~~ must consist of data, except where data is restricted from such use by law and such confidentiality cannot be reasonably maintained in ~~such the~~ data bank, contained within the files of all agencies, departments, and institutions being provided services by the office of central data processing division. If the data bank contains data of use to other departments, agencies, and institutions, ~~such the~~ data may be made available to such departments, agencies, and institutions after notice has been given to the agency, department, or institution from which the data was originally received.
7. Analyze proposals for executive branch agency word processing equipment and facility acquisitions and make such comments and recommendations as it may believe necessary so that such equipment and facilities will be compatible with electronic data processing equipment and programs under the supervision of central data processing the division. The office of management and budget ~~shall~~ may not approve vouchers for acquisition of word processing equipment and facilities by executive branch agencies unless ~~such the~~ the vouchers have attached to them the central data processing office's division's comments and recommendations.
8. Conduct conferences and meetings with various state agencies, departments, institutions, and political subdivisions to review proposals and provide information on improving telecommunications and transmission facilities in government.

9. Implement improvements in the state telecommunications and transmission facilities as are feasible and within the limitations of appropriated funds.
10. Adopt any rules determined to be necessary to establish standard procedures and practices in the development and use of telecommunications and transmission facilities provided by the office division.
11. Perform all other duties necessary to carry out this chapter.

SECTION 5. AMENDMENT. Section 54-44.2-02.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.2-02.1. Improvement of telecommunication systems. The office of central data processing information services division shall plan, coordinate, develop, and implement modern systems of communications. The director of central data processing the division may approve or disapprove the lease, purchase, or other contractual acquisition of telecommunications and transmission facilities equipment by executive branch agencies, except for the institutions and entities under the jurisdiction of the board of higher education, if replacement will improve the effectiveness and efficiency of the state communications system. The institutions and entities under the jurisdiction of the board of higher education together with the office of central data processing division shall make joint use of telecommunications and transmission facilities as will result in less cost to the state.

* SECTION 6. AMENDMENT. Section 54-44.2-02.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.2-02.2. Communications advisory committee. A communications advisory committee shall advise and assist the director of the office of central data processing information services division in the execution of the telecommunication systems responsibilities. The committee consists of the attorney general, superintendent of the highway patrol, adjutant general, chief engineer of the public service commission, director of the state radio system, commissioner of higher education, director of the office of management and budget, highway commissioner, registrar of motor vehicles, and representatives from the various law enforcement organizations and any other persons the committee may designate. The director of the office of management and budget, or the director's designee, is the chairman of the committee. The chairman is to call the meetings of the committee.

SECTION 7. A new section to chapter 54-44.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Capitol telephone exchange. The information services division shall provide a central telephone exchange in the state capitol. State agencies located in the capitol shall use the exchange for all telephone service. A state agency or institution not located in the state capitol may use the exchange if the person in charge of the agency or institution and the director of the information services division determine such usage to be advantageous. The director of the division may adopt rules necessary for the use, management, control, and operation of the exchange.

* NOTE: Section 54-44.2-02.2 was also amended by section 1 of House Bill No. 1512, chapter 658.

SECTION 8. A new section to chapter 54-44.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Wide area telephone service. The director of the information services division may contract for wide area telephone service for state agencies and institutions.

SECTION 9. AMENDMENT. Section 54-44.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.2-04. Appointment of data processing coordinators. Each agency, department, or institution of this state utilizing the services and equipment provided by the office of central data processing information services division shall appoint an electronic data processing coordinator. Such The coordinator shall maintain liaison with the office of central data processing division and assist the office division in such activities as the establishment of priorities, rescheduling, reports, and other areas related to making the most economical use of the data processing services and equipment.

SECTION 10. AMENDMENT. Section 54-44.2-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.2-06. Secrecy provision. The personnel of the office of central data processing are hereby authorized to information services division may receive from the various departments, and the employees of the various departments are hereby authorized to may provide to the office of central data processing division, any information from the files and records of the various departments necessary to effect the purposes of this chapter without regard to the confidential or secret nature of the information; provided, however, the personnel of the office of central data processing shall be division are subject to the same restrictions and penalties regarding the dissemination of this information as are the personnel of the department involved.

SECTION 11. AMENDMENT. Section 54-44.2-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.2-07. Acceptance of federal funds. Funds received by a state agency or institution from the government of the United States for the purpose of matching state funds for the purpose of improving normal or emergency telecommunication systems may be deposited in the central data processing information services operating fund, unless the funds have been specifically appropriated by the legislative assembly for some other purpose or unless transfer would be contrary to the federal regulations governing the grant. The director of the office of central data processing information services division may apply for any public or private grants available for the improvement of telecommunication systems.

SECTION 12. REPEAL. Chapter 48-07 of the 1987 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 643

HOUSE BILL NO. 1168
(Committee on Finance and Taxation)
(At the request of the Housing Finance Agency)

HOUSING FINANCE BONDS EXEMPTION

AN ACT to amend and reenact section 54-17-07.7 of the North Dakota Century Code, relating to the change of the reference from the Internal Revenue Code of 1954 to the Internal Revenue Code of 1986 for bonds issued by the North Dakota housing finance agency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-17-07.7 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-17-07.7. Terms of loans. Notwithstanding any other provision of law, the industrial commission is authorized to require, as a condition of the origination of loans and mortgage loans made pursuant to any of its housing finance programs or purchase of loans and mortgage loans to be purchased by it, prepayment penalties, restrictions upon assumability, default provisions, rights to accelerate, rights to increase the interest rate, and any other terms the commission may determine to be necessary or desirable to assure the repayment of its housing revenue bonds and, unless such conditions of origination or other terms are not required by the commission, the exemption from federal income taxes of the interest payable on its housing revenue bonds under the Internal Revenue Code of ~~1954~~ 1986. All such terms shall be enforceable by the originator, the commission, or any successor holder of the loans or mortgage loans unless expressly waived in writing by or on behalf of the commission.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 644

HOUSE BILL NO. 1037
(Legislative Council)
(Interim Budget Committee on Government Finance)

CAPITAL CONSTRUCTION FUND

AN ACT to provide for allocation of a portion of sales, use, and motor vehicle excise tax collections to the capital construction fund to be used for lease payments associated with capital improvement projects financed under chapter 54-17.2 and other capital improvement projects, subject to legislative appropriation; to establish a capital construction account; to authorize the industrial commission, acting as the state building authority, to issue loan notes to make funds available for construction and acquisition projects at institutions of higher education; to provide for a transfer from the general fund to the capital construction fund; to provide an appropriation; to provide legislative intent regarding the retirement of loan notes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Allocation of sales, use, and motor vehicle excise tax revenues to capital construction fund. Notwithstanding any other provision of law, the state treasurer shall deposit in the capital construction fund a portion of sales, use, and motor vehicle excise tax collections equal to ten percent of an amount, determined by multiplying the quotient of one percent divided by the general sales tax rate that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3. Revenue deposited in the capital construction fund may be used only for lease payments associated with capital improvement projects financed under chapter 54-17.2, and other capital improvement projects, subject to legislative appropriation.

SECTION 2. Capital construction account. The state treasurer shall establish a capital construction fund in the state treasury for the purpose of making lease payments associated with capital construction projects financed by the industrial commission acting as a state building authority.

SECTION 3. GENERAL FUND TRANSFER - APPROPRIATION. The state treasurer shall transfer an amount, not to exceed a total of \$6,545,000, which is hereby appropriated, for the biennium beginning July 1, 1989, and ending June 30, 1991, from the general fund to the capital construction fund. The state treasurer shall make the transfer or transfers as provided in this section at such times as may be requested by the industrial commission acting as a state building authority.

SECTION 4. APPROPRIATION. There is hereby appropriated out of any moneys in the capital construction fund in the state treasury, not otherwise appropriated, the sum of \$6,545,000, or so much thereof as may be necessary, to the industrial commission, acting as a state building authority, for the

purpose of making lease payments during the biennium beginning July 1, 1989, and ending June 30, 1991, on projects authorized by the industrial commission acting as the state building authority.

SECTION 5. PROJECT AUTHORIZATION - APPROPRIATION. The industrial commission, acting as the state building authority, shall arrange for the funding of the projects authorized in this section, hereby declared to be in the public interest, through the issuance of loan notes under North Dakota Century Code chapter 54-17.2, during the biennium beginning July 1, 1989, and ending June 30, 1991. The industrial commission may offer loan notes issued under this section for sale only to the Bank of North Dakota at a price that is as representative as possible of the current market interest rates for comparable loan notes purchased by the Bank of North Dakota. The proceeds of the loan notes and other available funds are hereby appropriated during the biennium beginning July 1, 1989, and ending June 30, 1991, for the following projects:

NAME OF AGENCY, DEPARTMENT, OR INSTITUTION	TYPE OF FACILITY	CONSTRUCTION/ ACQUISITION FUNDS
North Dakota state university	Computer technology transfer center	\$ 5,375,000
University of North Dakota	Complete acquisition of united hospital - north unit	1,720,000
	Abbott hall addition	3,300,000
North Dakota state college of science	Agricultural mechanics technology facility	2,916,000
Minot state university	Library facility	7,728,000
Total		\$21,039,000

The industrial commission shall issue loan notes authorized under this section with the condition that lease rental payments need not begin until July 1, 1991. This authority of the industrial commission to issue loan notes ends on June 30, 1991, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and to comply with any covenants entered into before that date.

In addition, the state board of higher education may obtain and utilize federal funds to expand the computer center project to an agriculture technology transfer center at North Dakota state university. There is hereby appropriated to the state board of higher education from any federal or other funds that become available the sum of \$5,375,000, or so much thereof as may be necessary, for the construction of such a facility at North Dakota state university for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 6. LEGISLATIVE INTENT. It is the intent of the legislative assembly that up to a total of \$4,400,000 from nongeneral fund sources will become available to assist in the retirement of the loan notes, issued for the project costs associated with construction of the projects authorized by this Act, in the following amounts:

North Dakota state university	Computer technology transfer center	\$1,343,000
North Dakota state college of science	Agricultural mechanics technology facility	300,000
University of North Dakota	Abbott hall addition	825,000
Minot state university	Library facility	1,932,000
Total		\$4,400,000

SECTION 7. EFFECTIVE DATE. Section 1 of this Act is effective for sales, use, and motor vehicle excise tax collections from taxable events occurring after June 30, 1991.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 645

SENATE BILL NO. 2218
(Committee on Natural Resources)
(At the request of the State Historical Board and the
North Dakota Geological Survey)

PALEONTOLOGICAL RESOURCE PROTECTION

AN ACT to provide for the protection of paleontological resources; to amend and reenact section 55-02-07, subsection 1 of section 55-03-00.1, and sections 55-03-02 and 55-03-07 of the North Dakota Century Code, relating to the protection of paleontological resources; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 8 of this Act, unless the context otherwise requires:

1. "Commission" means the North Dakota industrial commission.
2. "Paleontological resource" means any significant remains, trace, or imprint of a plant or animal that has been preserved by natural causes in earth materials and the localities in which they are found.

SECTION 2. Jurisdiction of the commission. The commission, acting through the office of the state geologist, has jurisdiction and authority to enforce the provisions of sections 1 through 8 of this Act. The commission has authority to make such investigations as it deems proper to determine whether facts exist which justify action by the commission. The commission has authority to adopt rules and issue orders to effectuate the provisions of sections 1 through 8 of this Act.

SECTION 3. Permit required. A permit must be obtained by any person, organization, institution, or company engaged on one's own behalf or on behalf of another to:

1. Identify or evaluate paleontological resources to satisfy state or federal requirements; or
2. Investigate, excavate, collect, or otherwise record paleontological resources on land owned by the state or its political subdivisions.

A permit may be issued upon filing of an application that contains information prescribed by the state geologist and upon the applicant's payment to the state geologist of the fee set by the state geologist. The state geologist may waive the fee requirement if the applicant is an instrumentality of the state. A permit may be issued only for the activities and at the locations described in the permit application.

SECTION 4. Permit - Duration - Revocation. A permit issued under sections 1 through 8 of this Act expires on December thirty-first of the year in which it is issued. A permit may be extended upon written request to the state geologist before expiration of the permit and upon payment to the state geologist of the fee set by the state geologist. A permit may be revoked at any time if it appears the permittee secured the permit through false information or that any activities performed by the permittee are being conducted negligently or improperly, or without regard for the careful preservation and conservation of the paleontological resource.

SECTION 5. Coordination of quaternary fossil finds. The state geologist shall notify the superintendent of the state historical board of all quaternary paleontological finds reported to the state geologist which potentially or actually contain cultural resources. The treatment of sites containing both paleontological remains and cultural resources will be handled in a manner jointly agreed upon by the state geologist and the superintendent. The term cultural resources has the same definition as the term is defined in section 55-03-00.1.

SECTION 6. Protection of paleontological specimens and sites. Any paleontological resource found or located upon any land owned by the state or its political subdivisions may not be destroyed, defaced, altered, removed, or otherwise disposed of in any manner without approval of the state geologist. The state geologist shall determine the significance of the paleontological resource to the understanding of the paleontologic and geologic history of North Dakota. It is the responsibility of the state and its political subdivisions to cooperate with the state geologist in identifying and implementing any reasonable alternative to destruction or alteration of any paleontological resource.

SECTION 7. Transfer of paleontological resources. The state geologist may exchange with or transfer to universities, colleges, governmental bodies, and scientific institutions duplicate paleontological resources it holds. The state historical board must receive preference for the receipt of duplicate paleontological resources.

SECTION 8. Violation of sections 1 through 8 of this Act - Penalty. Any person violating any provision of sections 1 through 8 of this Act is guilty of a class B misdemeanor and shall forfeit to the state all paleontological specimens discovered by the violator at that site. Any such violation is considered to have been committed in the county where the exploration, collecting, or excavation for paleontological resources was undertaken.

SECTION 9. AMENDMENT. Section 55-02-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-02-07. Protection of prehistoric or historic artifacts or sites. Any historical, or archaeological, or ~~paleontological~~ artifact or site that is found or located upon any land owned by the state of North Dakota or its political subdivisions or otherwise comes into its custody or possession and which is, in the opinion of the superintendent, significant in understanding and interpreting the history and prehistory of the state, shall not be destroyed, defaced, altered, removed, or otherwise disposed of in any manner without the approval of the state historical board. Notification of the superintendent's opinion of significance shall be communicated to the appropriate governing official. The state historical board through the

superintendent shall, within sixty days of written notification to it by the appropriate governing official of the state or political subdivision's desire, need, or intent to destroy, alter, remove, or otherwise dispose of a significant artifact or site, provide said governing official written direction for the care, protection, excavation, storage, destruction, or other disposition of said significant artifact or site. It shall be the responsibility of the state and its political subdivisions to cooperate with the state historical board in identifying and implementing any reasonable alternative to destruction or alteration of any historical, or archaeological, or ~~paleontological~~ artifact or site significant in understanding and interpreting the history and prehistory of the state before the state historical board shall approve such demolition or alteration.

SECTION 10. AMENDMENT. Subsection 1 of section 55-03-00.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Cultural resources" includes prehistoric or historic archeological sites, burial mounds, and unregistered graves, and ~~paleontological sites and materials~~.

* SECTION 11. AMENDMENT. Section 55-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-02. Contents of permit. Any permit issued pursuant to an application made as provided for in sections 55-03-00.1, 55-03-01, 55-03-01.1, 55-03-02, 55-03-03, 55-03-04, and 55-03-05 shall clearly describe the purpose of the permit and shall be in such form as prescribed by the superintendent. No permit shall be granted until the superintendent shall be satisfied that the applicant is professionally qualified to conduct that work for which a permit is required as provided for in sections 55-03-00.1, 55-03-01, 55-03-01.1, 55-03-02, 55-03-03, 55-03-04, and 55-03-05. When the cultural resources are on land owned by an instrumentality of the state of North Dakota, such permit will not be granted until the applicant has agreed to deliver to the superintendent all of the ~~articles, fossil remains, and~~ archaeological, ~~paleontological,~~ or historical materials of a useful nature found and removed from such land. In all cases, a permit shall not be granted until the applicant has agreed to deliver to the superintendent copies of all records and reports as determined by the superintendent to be pertinent to the work performed.

** SECTION 12. AMENDMENT. Section 55-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-03-07. Violation of chapter - Penalty. Any person violating any provision of this chapter is guilty of a class B misdemeanor and shall forfeit to the state all archaeological, ~~paleontological,~~ or historical articles and materials discovered by ~~him~~ the violator. Any such violation shall be held to be committed in the county where the exploration or excavation for archaeological, ~~paleontological,~~ or historical material was undertaken.

Approved April 6, 1989
Filed April 7, 1989

* NOTE: Section 55-03-02 was also amended by section 3 of House Bill No. 1584, chapter 307.

** NOTE: Section 55-03-07 was also amended by section 6 of House Bill No. 1584, chapter 307.

CHAPTER 646

SENATE BILL NO. 2261
(Committee on Natural Resources)
(At the request of the Office of Management and Budget)

GEOLOGICAL SURVEY AND STATE GEOLOGIST

AN ACT to provide for a geological survey and a state geologist and their duties and powers; to repeal sections 15-11-08, 15-11-09, 15-11-11, 15-11-11.1, 15-11-12, 15-11-13, 15-11-14, and 15-12-18 of the North Dakota Century Code, relating to the geological survey and the state geologist; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Commission" means the North Dakota industrial commission.
2. "State geologist" means the North Dakota state geologist.
3. "Survey" means the North Dakota geological survey.

SECTION 2. Survey - Responsibilities. There is created a North Dakota geological survey. The survey has the following responsibilities:

1. Serve as the primary source of geological information in the state.
2. Investigate, describe, and interpret the geological setting of the state with special reference to the economic products, geological hazards, and energy resources of the state's geology.
3. Conduct investigations designed to promote public understanding of the state's natural setting and natural resources.
4. Conduct research relative to the exploration, production, and regulation of oil, gas, coal, and other mineral resources of the state.
5. Conduct investigations and review externally prepared reports pertaining to geological aspects of the health and safety of the citizens and environment of the state.
6. Provide geological information contributing to the development of public health policies and to the use and management of natural resources.
7. Publish bulletins, circulars, maps, and other related materials that make available the results of the geological research and technical studies.

8. Provide educational information about the geology of the state to the public.
9. Operate and maintain a public repository for books, reports, maps, and other publications regarding the geology and mineral resources of the state.
10. Operate and maintain a public repository for fossil and rock specimens, rock cores, well cuttings, and associated data.
11. Provide technical advice and assistance concerning the geology of the state to local, state, and federal governmental agencies and to state educational institutions.
12. Aid in the regulation of the state's natural resources by providing the resource assessment and evaluation information necessary to create and maintain effective regulatory policy.
13. Investigate the kind, amount, and availability of the various mineral substances contained in state owned lands, so as to contribute to the most effective and beneficial administration of these lands for the state.
14. Consider such other scientific and economic questions in the field of geology as in the judgment of the state geologist is deemed of value to the people of the state.
15. Carry out any other responsibilities assigned to it by the legislative assembly.

SECTION 3. Survey - Direction and supervision. The survey is under the direction and control of the commission.

SECTION 4. Survey - Location. The commission shall decide the location of the survey. However, the survey shall maintain a core and sample library at the university of North Dakota with associated core receiving, processing, and analytical equipment. The survey, in cooperation with the university of North Dakota, shall maintain a geologic literature library and archives at the university of North Dakota. The survey may also maintain a working geologic literature library at a site selected by the industrial commission.

SECTION 5. State geologist - Qualifications - Selection - Salary. There is created the position of state geologist.

1. The state geologist's qualifications must include a doctor of philosophy degree in geology from an accredited university or college or equivalent geological experience, demonstrated competency in administration, and five years of practical experience in the field of geology to qualify for direction of the survey.
2. The commission shall appoint the state geologist. Prior to appointment of a state geologist the commission may appoint an acting state geologist.

3. The state geologist is under the direction and control and serves at the pleasure of the commission.
4. The annual salary of the state geologist is set by the commission subject to legislative appropriation.

SECTION 6. State geologist - Authority. The state geologist is the executive and administrative head of the survey and shall exercise the powers of the office and be responsible for the execution of its duties.

SECTION 7. State geologist - Grants, funds, and contracts. The state geologist, with the approval of the commission, may accept and expend money from and enter into contracts with federal, state, local, or other public entities to carry out the purposes of this chapter or to provide geological services. If such funds exceed appropriations made by the legislative assembly, the state geologist shall seek emergency commission approval for their expenditure.

SECTION 8. State geologist - Acquisition of geological and geophysical data - Confidentiality. The state geologist has the authority:

1. To acquire geological and geophysical data including seismic, magnetic, and gravity data by purchase or by acceptance of donated proprietary data.
2. To provide for the confidentiality of geological and geophysical data when requested by the seller or donor until the seller or donor notifies the state geologist that confidentiality is no longer required. Confidential data may be used only by the state geologist and staff members designated by the state geologist.

SECTION 9. State geologist - Specimens collected - Exhibited - Exchanged. The state geologist shall cause proper specimens, skillfully prepared, secured, and labeled, of rocks, minerals, ores, coals, fossils, and other earth materials discovered or examined in the course of the geological surveys to be preserved for public inspection free of cost. The state geologist, when practicable, shall cause duplicate specimens in reasonable numbers and quantities to be collected and preserved for the purpose of exchange with or transfer to universities, colleges, governmental bodies, and scientific institutions.

SECTION 10. State geologist - Purchase and sale of maps - Appropriation. The state geologist is authorized to purchase cartographic products from the federal government for the purpose of reselling the products to the public at a fee set by the state geologist. All moneys collected from the sale of the products must be deposited in the cartographic products fund. This fund must be maintained as a special fund and all moneys transferred into the fund are hereby appropriated and must be used and disbursed solely for the purpose of paying the state geologist's cost of purchasing and reselling the products.

SECTION 11. State geologist - Colleges and universities - Cooperation. The board of higher education and the survey shall develop a cooperative agreement for the sharing of books, equipment, and other physical resources.

SECTION 12. REPEAL. Sections 15-11-08, 15-11-09, 15-11-11, 15-11-11.1, 15-11-12, 15-11-13, 15-11-14, and 15-12-18 of the North Dakota Century Code are hereby repealed.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 647

HOUSE BILL NO. 1650
(Representatives Graba, Mertens, G. Berg)
(Senator Stromme)

SCHOOL FOR THE DEAF LAND SALE

AN ACT to authorize the director of institutions to sell and convey certain land belonging to the school for the deaf to Devils Lake public school district no. 1; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. School for the deaf land sale authorized. The director of institutions is authorized to sell and convey the following property of the school for the deaf to the Devils Lake school district no. 1, described as follows:

A parcel of land located in the southwest quarter of the southwest quarter of section twenty-seven, township one hundred fifty-four north, range sixty-four west of the fifth principal meridian, Ramsey County, state of North Dakota, further described as follows:

Beginning at the southwest corner of the Devils Lake school district property which is located at a point on the section line eight hundred eighty-seven and one-tenth feet northerly of the section corner common to sections twenty-seven, twenty-eight, thirty-three, and thirty-four, thence southerly along said section line a distance of eight hundred eighty-seven and one-tenth feet to the section corner, thence easterly along the section line a distance of one thousand three hundred twenty feet, thence northerly along the quarter-quarterline a distance of eight hundred fifty feet to the south boundary line of the Devils Lake school district property, thence turn a left deflection angle of eighty-eight degrees twenty-three minutes along said south boundary line a distance of one thousand three hundred twenty and five-tenths feet to the point of beginning, less the so-called railroad right of way across the property as shown on the enclosed plat. This tract contains twenty-six and three-tenths acres less two and two-tenths acres for the railroad right of way, more or less. And also includes several lots in the Wineman first addition of the city of Devils Lake located south of the above-noted section twenty-seven in section thirty-four and east of the railroad crossing through both sections in a northwesterly direction and north of fourteenth street west and west of the north-south shelterbelt on the west side of the school for the deaf. The payment for this additional land must be the same as the assessed value of the above-described land to be sold.

This land is to be appraised and its sale shall be negotiated by the director of institutions and sold for not less than the appraised value. The

conveyance must reserve to the state all mineral rights in and under the premises conveyed. The quit claim deed must provide that if the land ever ceases to be used for school purposes the land shall revert to the state of North Dakota upon payment to the school district of the same price for which it was purchased. The deed must provide that the students enrolled at the state school for the deaf are guaranteed use of the facilities placed upon the property by the Devils Lake public school district no. 1 in the proportion that the number of students enrolled at the school for the deaf of North Dakota bears to the total number of students entitled to use the facilities or as agreed to by the officials of the school for the deaf and the school district.

The proceeds from the sale of this land must be deposited in a special fund to be used by the school for the deaf for a special project authorized by the director of institutions and may not be placed into the state's general fund.

The provisions of sections 54-01-05.2 and 54-01-05.5 do not apply to the sale authorized by this section.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 648

SENATE BILL NO. 2268
(Senators Olson, Lips, Heinrich)
(Representatives Martinson, Hoffner)

BURLEIGH COUNTY FAIRGROUNDS LAND SALE

AN ACT to authorize the director of institutions to sell and convey certain land owned by the state of North Dakota to Burleigh County for use as fairgrounds; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Sale of land - Proceeds. The director of institutions is authorized to sell and convey the following property to Burleigh County, North Dakota:

A tract of land approximately three hundred twelve acres, lying in section one, township one hundred thirty-eight, range eighty west, Burleigh County, North Dakota.

The property must be sold at not less than fair market value, based upon two independent appraisals. The state shall reserve all mineral rights now held by the state in and under the premises. Sections 54-01-05.2, 54-01-05.5, and 54-21-26.1 do not apply to the sale authorized by this Act. The proceeds realized from the sale authorized by this Act must be deposited in the North Dakota state penitentiary land fund. The property sold under the authority of this Act must be used for fairgrounds.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 649

HOUSE BILL NO. 1428
(Marks)

STATE TREASURER'S NEGOTIABLE INSTRUMENTS

AN ACT to amend and reenact section 54-27-15.1 of the North Dakota Century Code, relating to the cancellation and subsequent repayment of state treasurer's checks, warrants, and warrant-checks; and to repeal sections 54-27-14, 54-27-15, 54-27-15.3, and 54-27-15.4 of the North Dakota Century Code, relating to cancellation and subsequent repayment of certain checks and warrants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-27-15.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-27-15.1. State treasurer's checks, warrants, and warrant-checks - Cancellation - Deposit to general common schools trust fund - Subsequent payment. The state treasurer, at the beginning of each fiscal year, shall prepare a list of the checks, warrants, and warrant-checks drawn on various depositories which are more than six three years old which remain outstanding and unpaid and shall show the number, date, payee (with address of payee if available), amount, bank on which drawn, and fund against which said check instrument was drawn. A copy of such list shall then be used as an authority for writing a receipt of the total of such check or checks and shall credit such amount to the general fund common schools trust fund pursuant to chapter 47-30.1. One copy of such receipt with list of checks instruments affected shall be provided to the office of management and budget administrator of unclaimed properties. In the event such check, warrant, or warrant-check is at any subsequent time presented for payment, or a claim is made by any person for the amount of any such instrument, further proceedings must be conducted in accordance with chapter 47-30.1.

SECTION 2. REPEAL. Sections 54-27-14, 54-27-15, 54-27-15.3, and 54-27-15.4 of the North Dakota Century Code are hereby repealed.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 650

SENATE BILL NO. 2384
(Yockim, Mathern, Robinson)

POLITICAL SUBDIVISION REVENUE DISTRIBUTIONS

AN ACT to amend and reenact sections 54-27-19.1, 57-51-14, subsection 3 of section 57-51-15, sections 57-58-01, 57-60-14, 57-60-15, and subsection 2 of section 57-62-02 of the North Dakota Century Code, relating to distribution of various funds to political subdivisions by the state treasurer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-27-19.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-27-19.1. Township highway aid fund - Distribution. Notwithstanding any other provision of law, one cent per gallon [3.79 liters] of the tax imposed by sections 57-43.1-02 and 57-43.2-02 shall not be refunded and the proceeds shall be distributed as provided in this section. The tax commissioner shall transfer the proceeds of one cent per gallon [3.79 liters] of the tax imposed by sections 57-43.1-02 and 57-43.2-02 to the state treasurer who shall deposit the proceeds in a township highway aid fund in the state treasury. The state treasurer shall no less than quarterly allocate and distribute all moneys in the township highway aid fund to the counties of the state based on the length of township roads in each county compared to the length of all township roads in the state. To receive any funds under this section, organized townships must provide fifty percent matching funds. The county treasurer shall allocate the funds received to the organized townships in the county which provide fifty percent matching funds based on the length of township roads in each such organized township compared to the length of all township roads in the county. The funds received must be deposited in the township road and bridge fund and used for highway and bridge purposes. If a county has no organized townships, or has some organized and some unorganized townships, the county shall retain a pro rata portion of the funds received based on the length of roads in unorganized townships compared to the length of township roads in organized townships in the county. Moneys retained by a county for the benefit of unorganized townships under this section must be deposited in the county road and bridge fund. Moneys retained by the county treasurer due to the failure of organized townships to provide required matching funds must be returned to the state treasurer who shall deposit the funds in the highway tax distribution fund. The board of county commissioners shall certify to the state treasurer any change in township road mileage when a change occurs and shall, by July first of each even-numbered year, certify the total number of township road mileage in each of the county's organized and unorganized townships. The state treasurer shall prescribe the form and manner by which the certification is made.

SECTION 2. AMENDMENT. Section 57-51-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51-14. Duties of commissioner and state treasurer. It shall be the duty of the commissioner to deposit with the state treasurer all moneys collected by him under this chapter and to accompany each remittance, when possible, with a certificate showing the county where produced. The state treasurer, no less than quarterly, shall pay over to the county treasurers and city auditors of the several counties the moneys to which they are entitled hereunder.

SECTION 3. AMENDMENT. Subsection 3 of section 57-51-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Forty-five percent of all revenues as may by the legislative assembly be allocated to any county hereunder must be credited by the county treasurer to the county general fund. Thirty-five percent of all revenues allocated to any county must be apportioned by the county treasurer no less than quarterly to school districts within the county on the average daily attendance distribution basis, as certified to him by the county superintendent of schools. However, no school district may receive in any single academic year an amount under this subsection greater than the county average per-pupil cost multiplied by seventy percent, then multiplied by the number of pupils in average daily attendance or the number of children of school age in the school census for the county whichever is greater. Provided, however, that in any county in which the average daily attendance or the school census, whichever is greater, is fewer than four hundred, the county shall be entitled to one hundred twenty percent of the county average per-pupil cost multiplied by the number of pupils in average daily attendance or the number of children of school age in the school census for the county, whichever is greater. Once this level has been reached through distributions under this subsection, all excess funds to which the school district would be entitled as part of its thirty-five percent share must be deposited instead in the county general fund. The county superintendent of schools of each oil-producing county shall certify to the county treasurer by July first of each year the amount to which each school district is limited pursuant to this subsection. As used in this subsection, "average daily attendance" means the average daily attendance for the school year immediately preceding the certification by the county superintendent of schools required by this subsection. Twenty percent of all revenues allocated to any county hereunder must be paid no less than quarterly by the county state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official decennial federal census. However, no city may receive in any fiscal year an amount under this subsection greater than five hundred dollars per capita. Once this level has been reached through distributions under this subsection, all excess funds to which any city would be entitled except for this limitation must be deposited instead in the county that county's general fund. Provided, however, that in determining the population of any city in which total employment increases by more than two hundred percent seasonally due to tourism, the population of that city for purposes of determining

the per capita limitation in this section shall be increased by adding to the population of the city as determined by the last official decennial federal census a number to be determined as follows:

- a. Seasonal employees of state and federal tourist facilities within five miles [8.05 kilometers] of the city shall be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- b. Seasonal employees of all private tourist facilities within the city and seasonal employees employed by the city shall be included by adding the months all such employees were employed during the prior year and dividing by twelve.
- c. The number of visitors to the tourist attraction within the city or within five miles [8.05 kilometers] of the city which draws the largest number of visitors annually shall be included by taking the smaller of either of the following:
 - (1) The total number of visitors to that tourist attraction the prior year divided by three hundred sixty-five; or
 - (2) Four hundred twenty.

* SECTION 4. AMENDMENT. Section 57-58-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-58-01. Distribution to counties and local subdivisions. It is hereby provided that any political subdivision which has an existing bonded indebtedness for which a tax levy must be made in 1970 or any year thereafter, shall reduce its levy in each such year for current operating purposes by the amount which its tax levy on taxable property in that year for retirement of the bonded indebtedness is increased because of the exemption of personal property by subsection 25 of section 57-02-08. On or before February 1, 1971, the county auditor of each county shall certify to the state tax commissioner the total amount of taxes levied in the year 1968 for the state, county, cities, park boards, school districts, airport authorities, townships, and all other units of government having the authority to levy taxes, and levies voted by the people, new or present levies increased by legislative action of such county on those items of personal property exempt under the provisions of section 57-02-08, and, in addition, the total valuation of real estate and taxes levied on real estate for the year 1968. On or before June 1, 1980, and each year thereafter, the state tax commissioner shall certify for payment to the state treasurer an amount, for payment by the state treasurer to each chief county and city fiscal officer, determined to be due such county and city based upon the personal property taxes levied in the year 1968 for the political subdivisions herein mentioned on the items of personal property exempt from the personal property tax under the provisions of section 57-02-08, the per capita school tax under the provisions of former section 57-15-23, and the grain tax under the provisions of former chapter 57-03, together with any adjustments to be made in the manner hereinafter provided. Within sixty days after the receipt of the revenue as provided by this section, the county treasurer shall allocate and remit to the county, ~~cities~~ park boards, school districts, airport authorities, townships, and all other units of government having the authority to levy taxes that amount of revenue which is received

* NOTE: Section 57-58-01 was also amended by section 2 of House Bill No. 1018, chapter 17.

from the state in the same ratio as he would have distributed the revenue from the personal property tax, adjusting such amount by any increase or decrease in real property taxes as levied by each taxing authority according to the formula hereinafter provided. Any amount that would be apportioned and credited to the retirement of a bonded indebtedness existing in 1970 for which a tax levy was made in 1970 and in any year thereafter, shall be credited to the general fund of the political subdivision. In the years after 1971, payments to the counties under this section shall be made based upon ninety-five percent of such payment for 1971 together with a growth factor which shall be based upon the dollar amount of increase or decrease in real property taxes levied within each county. For each seven dollar increase in real property taxation within a county, the state shall contribute an additional one dollar over that amount which equal ninety-five percent of such payment in the base year. For each seven dollar decrease in real property taxation within a county, the state shall contribute one dollar less than that amount which equals ninety-five percent of such payment in the base year.

On or before June 1, 1980, and each year thereafter, the state tax commissioner shall certify to the state treasurer the amount determined to be due to the state based upon the personal property taxes levied in the year 1968 for the North Dakota state medical center. The amount so certified shall be computed in accordance with the formula provided in this section for computing the amounts to be certified and paid to the counties. The state treasurer upon receiving the certification from the tax commissioner shall transfer from the general fund to the credit of the North Dakota state medical center the amount so certified.

Any political subdivision which levied taxes on taxable property in the year 1970 for a specific fund or purpose for which a levy was not made by it in the year 1968 shall be entitled to a distribution of revenue from the state in the year 1971 for any such levy. The amount of such distribution shall be determined as follows: the county auditor shall certify to the state tax commissioner as soon as possible after March 30, 1971, the amount of each such levy made by and spread for each political subdivision on taxable real property in the county in the year 1970; the tax commissioner shall forthwith determine the correctness of such amounts and certify to the state treasurer for immediate payment to the county and cities an amount that is determined by dividing the total of such levies made and spread in 1970 on taxable real property in the county by the growth factor that is provided in the first paragraph of this section; the county treasurer within fifteen days after the receipt of such revenue from the state treasurer shall allocate and remit to each political subdivision its proportionate amount of that revenue.

If the classification of any property for taxation purposes is changed from real to personal property or from personal to real property because of legislative or judicial action, the county auditor of the county in which the property is located shall forthwith certify to the tax commissioner the amount of real estate taxes or personal property taxes that was levied on all such property by each taxing district in the year 1968 and in any other year thereafter that the tax commissioner may request. The tax commissioner, in determining the amount to be certified to the state treasurer for payment to the county political subdivisions pursuant to this section, shall adjust the amounts of taxes certified by the county auditor as levied on real property and on personal property in 1968 and in any other year as may be necessary by adding to or subtracting from each such amount the taxes on the reclassified property so that the distribution by the state to the county will be

determined as though such property had been taxed in 1968 and all later years in the classification into which it was reclassified.

SECTION 5. AMENDMENT. Section 57-60-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-14. Allocation of revenue. The state treasurer shall no less than quarterly allocate all moneys received from all coal conversion facilities in each county pursuant to the provisions of this chapter and moneys received for those taxes for which a credit is allowed pursuant to section 57-60-06, notwithstanding the provisions of section 57-33.1-08, thirty-five percent to the county and sixty-five percent to the state general fund, except moneys received from the tax imposed by subsection 3 of section 57-60-02, which must be deposited in the state general fund.

SECTION 6. AMENDMENT. Section 57-60-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-15. Duty of county state treasurer - Allocation to political subdivisions. Moneys received by allocated to counties under the provisions of section 57-60-14 shall be apportioned as follows:

1. Thirty percent of all revenues allocated to any county shall be paid by the county state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
2. Forty percent of the revenues allocated to any county shall be deposited by paid to the county treasurer who shall deposit it in the county general fund to be used for general governmental purposes.
3. Thirty percent of all revenues allocated to any county shall be apportioned by the county state treasurer to school districts within the county on the average daily membership basis, as certified to ~~him~~ the state treasurer by the county superintendent of schools.

SECTION 7. AMENDMENT. Subsection 2 of section 57-62-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Thirty-five percent shall be allocated to the coal-producing counties and shall be distributed among such counties in such proportion as the number of tons [metric tons] of coal severed at each mining operation bears to the total number of tons [metric tons] of coal severed in the state during such monthly period. Allocations under subdivision subdivisions ~~a shall be apportioned by the county treasurer within fifteen days from the date the moneys are received from the state treasurer and allocations under subdivision and b shall be apportioned by the state treasurer as follows:~~
 - a. If the tipple of the currently active coal mining operation in a county is not within fifteen miles [24.14 kilometers] of

another county in which no coal is mined, the revenue apportioned according to this subdivision shall be allocated as follows:

- (1) Thirty percent shall be paid by the county state treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
 - (2) Forty percent shall be ~~deposited by~~ paid to the county treasurer who shall deposit it in the county general fund to be used for general governmental purposes.
 - (3) Thirty percent shall be apportioned by the county state treasurer to school districts within the county on the average daily membership basis, as certified to the county state treasurer by the county superintendent of schools.
- b. If the tipple of a currently active coal mining operation in a county is within fifteen miles [24.14 kilometers] of another county in which no coal is mined, the revenue apportioned from that coal mining operation according to this subsection shall be allocated, subject to the definitions of terms and the requirements in paragraph 4, as follows:
- (1) Thirty percent shall be paid by the state treasurer to the incorporated cities of the coal-producing county and to any city of a non-coal-producing county when any portion of the city lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county, based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
 - (2) Forty percent shall be divided by the state treasurer between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county. The non-coal-producing county portion shall be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation. The county director of tax equalization of the coal-producing county shall certify to the state treasurer the number of quarter sections of land in the non-coal-producing counties which lie at least in part

within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation and their assessed valuations.

- (3) Thirty percent shall be apportioned by the state treasurer to school districts within the coal-producing county and to school districts in adjoining non-coal-producing counties when a portion of those school districts' land includes any of the quarter sections of land certified by the director of tax equalization to the state treasurer to be eligible to share county funds as provided for in paragraph 2. The county superintendent of the non-coal-producing counties shall certify to the state treasurer the number of students actually residing on these quarter sections lying outside the coal-producing county and each school district in non-coal-producing counties shall receive a portion of the money under this paragraph based upon the ratio of the number of children residing on quarter sections of that school district within the fifteen-mile [24.14-kilometer] radius of the tipple of a currently active coal mining operation to the total number of schoolchildren from the coal-producing county combined with all the schoolchildren certified to be living on quarter sections within fifteen miles [24.14 kilometers] of the tipple of the currently active coal mining operation in the coal-producing county.
- (4) For the purposes of this subdivision:
- (a) The terms "currently active coal mining operation in a county", "currently active coal mining operation in the coal-producing county", and "currently active coal mining operation" mean a coal mining operation that produced more than one hundred fifty thousand tons [136,077.71 metric tons] of coal in a coal-producing county during the prior quarterly period.
 - (b) The term "coal-producing county" means a county in which more than one hundred fifty thousand tons [136,077.71 metric tons] of coal were mined in the prior quarterly period.
 - (c) The term "another county in which no coal is mined" means a county in which not more than seventy-five thousand tons [68,038.86 metric tons] of coal were mined in the prior quarterly period.
 - (d) The terms "non-coal-producing county" and "non-coal-producing counties" mean any county in which not more than seventy-five thousand tons [68,038.86 metric tons] of coal were mined in the prior quarterly period.
 - (e) In computing each amount to be paid as provided in paragraph 1, 2, or 3 for coal severance tax revenue from coal mined during a monthly period, the state treasurer shall deduct from the allocation the amount of coal severance tax revenue, if any, that the governmental body in the non-coal-producing county received from the coal mined in the non-coal-producing county during the same monthly period.

CHAPTER 651

SENATE BILL NO. 2225
(Committee on State and Federal Government)
(At the request of the Bank of North Dakota)

STATE BOND PAYMENT, CANCELLATION, OR DESTRUCTION

AN ACT to amend and reenact sections 54-29-01, 54-29-02, and 54-29-03 of the North Dakota Century Code, relating to the payment, cancellation, and destruction of state bonds; and to repeal sections 54-29-04 and 54-29-05 of the North Dakota Century Code, relating to the reissuance of canceled and destroyed bonds and the issuance of coupon bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-29-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-29-01. State bonds - Where payable. All state bonds issued under the provisions of this title shall be payable at a place or places specified in the resolution authorizing the same and may be payable at the office of the state treasurer in Bismarck, or at the Bank of North Dakota, or at any suitable bank or trust company in Minneapolis, St. Paul, Chicago, or New York, or at the option of the holder at any one of two or more of such places or other related documents of the industrial commission.

SECTION 2. AMENDMENT. Section 54-29-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-29-02. When state bonds may be canceled and destroyed. Any bonds issued by the state and the interest coupons accompanying them, if any, shall be canceled-

- 1- At any time after their maturity and payment;
- 2- If they have become mutilated or defaced in the course of issuing, negotiating, and delivering; or
- 3- If after the expiration of six months from the date of issue, they are and remain unsold; and

destroyed in the presence of the governor, the secretary of state, and the state treasurer, or their designated representatives, if a resolution directing such destruction has been adopted and signed in duplicate by the industrial commission or by a majority of the members thereof. One duplicate of the resolution shall be filed in the office of the commission and the other duplicate in the office of the state treasurer and destroyed according to the provisions of the resolution or other related documents of the industrial commission.

SECTION 3. AMENDMENT. Section 54-29-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-29-03. Filing of certificate showing destruction. Within thirty days after the destruction of bonds issued by the state and the coupons accompanying them, if any, there shall be filed in the office of the industrial commission and in the office of the state treasurer, there to be kept on file with the resolution or other related documents to which it refers, a certificate, signed by the governor, the secretary of state, and the state treasurer, or their designated representatives executed by the person or persons responsible for the destruction, showing the destruction of such bonds and coupons, if any, to have been done and performed in accordance with the terms of the resolution or other related documents of the industrial commission.

SECTION 4. REPEAL. Sections 54-29-04 and 54-29-05 of the North Dakota Century Code are hereby repealed.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 652

SENATE BILL NO. 2226
(Committee on Natural Resources)
(At the request of the Bank of North Dakota)

STATE TREASURER LAND TRANSACTIONS

AN ACT to create and enact a new section to chapter 54-30 of the North Dakota Century Code, relating to the sale or lease of land acquired by the state treasurer as trustee for the state of North Dakota; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-30 of the North Dakota Century Code is hereby created and enacted to read as follows:

Land acquired by state treasurer - Sale or lease by the Bank of North Dakota or board of university and school lands - Deposit of net proceeds in bond sinking fund. The Bank of North Dakota or the board of university and school lands, as agent of the state treasurer as trustee for the state of North Dakota, shall manage all lands acquired in the name of the state treasurer as trustee for the state of North Dakota under this chapter and, with the approval of the state treasurer, shall have full power to sell or lease such lands. All instruments executed by the bank or board in furtherance of this authority must be executed by an authorized officer or employee of the Bank or board in the name of "The Bank of North Dakota or the board of university and school lands as agent for the state treasurer as trustee for the state of North Dakota". The Bank or board may charge a fee and may be reimbursed for all actual costs incurred in the management and sale of these lands. The net proceeds from the sale or lease of these lands must be deposited in the real estate bond sinking fund established by this chapter. The sale and leasing of these lands must be done in accordance with chapter 15-07. In the case of a lease by the party holding the right of redemption, that party has the right to buy at any time.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 653

SENATE BILL NO. 2476
(Senators Holmberg, Maixner, Maxson)
(Representatives Wentz, Nelson)

LEGISLATIVE COUNCIL INTERIM ELECTIONS COMMITTEE AND MAIL BALLOT PRIMARIES

AN ACT to create a legislative council interim committee on elections and provide a mechanism for a mail ballot primary election; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Committee on elections - Members. The legislative council shall appoint a committee on elections. The committee must consist of legislators appointed in the same manner as the council appoints members of other interim committees; the executive director, or a designee, of the North Dakota association of counties; the executive director, or a designee, of the North Dakota league of cities; the president, or a designee, of the county auditors association; and one representative as appointed by the state chairman for each of the two political parties that received the highest number of votes cast for governor at the most recent general election at which a governor was elected. The legislative council shall designate the chairman of the committee. The committee shall operate according to the statutes and procedures governing the operation of other legislative council interim committees.

SECTION 2. Committee on elections - Powers and duties.

1. The committee on elections shall consider all aspects of the election process with emphasis on new voting concepts that would make the process more timely and cost effective.
2. The committee shall solicit proposals from counties that had fewer than two thousand votes cast at the last general election and fewer than one thousand votes cast at each of the last two primary elections which are interested in using mail ballots for the 1990 primary election. In the summer of 1989, the committee shall adopt guidelines a county must use in preparing a proposal for a mail ballot election. The guidelines must require the county to provide for the security and confidentiality of ballots, accessibility for all voters, the opening of one polling place and notice of the location at all other polling places used at the last election, voter registration, and any other criteria the committee considers necessary to ensure a valid mail ballot primary.
3. Counties shall submit their mail ballot proposals to the committee by February 1, 1990. On or before March 15, 1990, the committee may accept the proposals of one or two counties or reject all proposals. The legislative council shall award the amounts the committee determines necessary to conduct a mail ballot election,

within the limits of legislative appropriation, to the counties with proposals approved by the committee.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,800, or so much thereof as may be necessary, to the legislative council for the purpose of funding mail ballot voting at the 1990 primary election for the biennium beginning July 1, 1989, and ending June 30, 1991.

SECTION 4. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 654

SENATE BILL NO. 2067
(Legislative Council)
(Interim Political Subdivisions Committee)

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

AN ACT to establish a state advisory commission on intergovernmental relations; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Advisory commission on intergovernmental relations - Membership - Terms - Meetings.

1. The advisory commission on intergovernmental relations consists of eleven members:
 - a. The North Dakota league of cities executive committee shall appoint two members of the commission.
 - b. The North Dakota association of counties executive committee shall appoint two members of the commission.
 - c. The North Dakota township officers association executive board of directors shall appoint one member of the commission.
 - d. The North Dakota recreation and park association executive board shall appoint one member of the commission.
 - e. The governor or the governor's designee is a member of the commission.
 - f. The legislative council shall appoint four members of the legislative assembly as members of the commission.
2. The legislative council shall designate the chairman and vice chairman of the commission.
3. All members of the commission shall serve for a term of two years, beginning July first of each odd-numbered year, and may be reappointed for additional terms.
4. If any member of the commission resigns or ceases to be a member of the class the member represents, that person's membership on the commission ceases immediately and the appropriate appointing authority may appoint a new member for the remainder of the term.
5. The commission shall meet at least semiannually.

SECTION 2. Functions and duties. The advisory commission on intergovernmental relations shall:

1. Serve as a forum for the discussion of resolution of intergovernmental problems.
2. Engage in activities and studies relating to the following subjects:
 - a. Local governmental structure.
 - b. Fiscal and other powers and functions of local governments.
 - c. Relationships between and among local governments and the state or any other government.
 - d. Allocation of state and local resources.
 - e. Interstate issues involving local governments, including cooperation with appropriate authorities of other states.
 - f. Statutory changes required to implement commission recommendations.
3. Present reports and recommended legislative bills to the legislative council for consideration in the same manner as interim legislative council committees.
4. Prepare model ordinances or resolutions for consideration by officials of political subdivisions.

SECTION 3. Staff services. The advisory commission on intergovernmental relations may request provision of appropriate staff services from the legislative council.

SECTION 4. Finances.

1. A member of the advisory commission on intergovernmental relations who is a member of the legislative assembly is entitled to receive, from funds available to the commission, compensation per day for each day spent in attendance at commission meetings in the same amount as provided in section 54-35-10 for members of the legislative council and reimbursement for travel and other necessary expenses incurred in the performance of official duties in the amounts provided by law for other state officers. Members of the advisory commission on intergovernmental relations who are appointed by an organization representing political subdivisions may be reimbursed for attendance at commission meetings by the organization by which they were appointed.
2. The commission may apply for, contract for, receive, and expend for its purposes any appropriation or grant from any public or private source.
3. Political subdivisions of the state may appropriate funds to the commission to share in the cost of its operations.

SECTION 5. Reports. The advisory commission on intergovernmental relations shall report its findings and recommendations and any proposed legislation necessary to implement the recommendations to the legislative council at the time and in the manner reports are made by interim committees of the legislative council. The legislative council may accept, reject, or amend the report of the advisory commission on intergovernmental relations. The legislative council shall include the report, or any portion of it, as accepted, rejected, or amended, in the council's final report. Copies of the report of the advisory commission on intergovernmental relations, as accepted, rejected, or amended by the legislative council, must be available to counties, cities, townships, appropriate state departments and agencies, and the public.

SECTION 6. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$4,700, or so much thereof as may be necessary, to the advisory commission on intergovernmental relations for the purposes of this Act for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 655

HOUSE BILL NO. 1545
(Representatives Whalen, Kingsbury, K. Thompson)
(Senators David, Olson)

NORTH DAKOTA PRODUCTS IN CONSTRUCTION

AN ACT to provide certain architects and engineers with information about products manufactured in the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Certain architects and engineers to be provided product listing of in-state manufacturers.

1. The state or any political subdivision of the state which contracts for the services of a registered architect or engineer pursuant to the requirements of section 18-12-04 or 48-02-02 shall notify the director of the economic development commission, at the time the architect or engineer is retained, of the nature of plans and specifications for the construction or work involved in the project and provide the director with information identifying the architect or engineer. The director of the economic development commission immediately shall send a product listing of manufacturers located in this state to the architect or engineer, describing those manufacturers and their products in the following major industrial groups:
 - a. Lumber and wood products, except furniture;
 - b. Rubber and miscellaneous plastic products;
 - c. Stone, clay, glass, and concrete products;
 - d. Fabricated metal products, machinery, and transportation equipment; and
 - e. Any other major industrial groups that the director determines include manufactured products that may be used in the project.
2. An architect or engineer who receives a product listing under section 1 of this Act, if possible, shall design the project with specifications that are met by listed products manufactured in this state.

Approved March 30, 1989
Filed March 31, 1989

CHAPTER 656

SENATE BILL NO. 2034
(Legislative Council)
(Interim Budget Committee on Government Finance)

JOINT COUNTY AND CITY IMPROVEMENT FINANCING

AN ACT to amend and reenact section 54-40-01 of the North Dakota Century Code, relating to the joint issuance of bonds by counties or cities to finance equipment, roads, bridges, and road and bridge improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-40-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-40-01. Agreement - Exercise of joint powers - Bonds.

1. Two or more governmental units or municipal corporations having in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised for the purpose of acquiring, constructing, and maintaining any building for their joint use. The term "governmental unit" as used in this section includes and means every city, county, town, park district, school district, states and United States governments and departments of each thereof, and all other political subdivisions even though not specifically named or referred to herein.
2. Two or more counties or cities, or any combination of counties or cities, whether or not they have in common any portion of their territory or boundary, by agreement entered into through action of their governing bodies, may jointly or cooperatively exercise their respective separate powers, or any power common to the contracting parties or any similar powers, for the purpose of acquiring equipment or constructing roads, bridges, and road and bridge improvements.
3. Counties or cities, or any combination of counties or cities, may jointly issue bonds in the same manner and for the purposes provided for in chapter 21-03.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 657

HOUSE BILL NO. 1305
(Graba, Skjerven, Brokaw)

STATE SURPLUS PROPERTY TRANSFERS

AN ACT to amend and reenact subsection 2 of section 54-44-04.6 of the North Dakota Century Code, relating to the sale of state surplus property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 54-44-04.6 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The director of the office of management and budget shall dispose of the state surplus property in the following manner:
 - a. By transferring it to other state departments, institutions, or agencies without cost other than ~~transportation~~ administrative expenses, which ~~shall~~ must be paid by the receiving agency. ~~Provided, when~~ When the state surplus property was originally purchased ~~pursuant to~~ under an appropriation other than from the general fund of the state, the agency receiving that state surplus property shall pay an amount equal to the fair market value of the property. Moneys received ~~pursuant to~~ under this subdivision ~~shall~~ must be deposited in the fund from which the original purchases were made.
 - b. If not disposed of under subdivision a, title to the property must be transferred to political subdivisions without cost, except administrative expenses.
 - c. If not disposed of under subdivision a or b, then by sale on sealed bids or at public auction to the highest and best bid bidder for property valued at more than three thousand dollars, with no money deposit required prior to sale, or by sealed bids, public auction, or negotiation at fair value for property valued at less than three thousand dollars.
 - c-. ~~If not disposed of under subdivision a or b, title to the property shall be transferred to political subdivisions without cost, except transportation expenses.~~

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 658

HOUSE BILL NO. 1512
(Carlson, Ness)

COMMUNICATIONS ADVISORY COMMITTEE MEMBERS

AN ACT to amend and reenact section 54-44.2-02.2 of the North Dakota Century Code, relating to the membership of the communications advisory committee.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 54-44.2-02.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-44.2-02.2. Communications advisory committee. A communications advisory committee shall advise and assist the director of the office of central data processing in the execution of the telecommunication systems responsibilities. The committee consists of the ~~attorney general,~~ superintendent of the highway patrol, adjutant general, chief engineer of the public service commission, director of the state radio system, commissioner of higher education, director of the office of management and budget, executive director of the department of human services, highway commissioner, registrar of motor vehicles, and representatives from the various law enforcement organizations and any other persons the committee may designate secretary of the industrial commission. Any member of the committee may designate another individual to represent that member on the committee. The director of the office of management and budget, or the director's designee, is the chairman of the committee. The chairman is to call the meetings of the committee.

Approved March 14, 1989
Filed March 15, 1989

* NOTE: Section 54-44.2-02.2 was also amended by section 6 of House Bill No. 1632, chapter 642.

CHAPTER 659

HOUSE BILL NO. 1035
(Legislative Council)
(Interim Budget Committee on Government Administration)

STATE SALARIES EQUITY

AN ACT to create a pay equity implementation fund; to create and enact a new section to chapter 54-44.3 of the North Dakota Century Code, relating to compensation relationships within the state's classification plan; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-44.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

Compensation relationships - Policy. It is the policy of this state to establish equitable, nondiscriminatory compensation relationships among all positions and classes within the state's classification plan.

SECTION 2. Report to legislative council. The central personnel division periodically shall report its findings and recommendations under this Act to the office of management and budget, which in turn shall report to a legislative council committee designated by the legislative council to receive such reports. The central personnel division shall seek input from public employees and other affected parties in the implementation of the state's pay equity policy.

SECTION 3. Pay equity implementation fund. The office of management and budget shall maintain a pay equity implementation fund consisting of appropriations to the fund by the legislative assembly for the period beginning July 1, 1989, and ending June 30, 1993, for the purpose of establishing equitable compensation relationships among all positions and classes within the state's classification plan. The director of the office of management and budget shall transfer the appropriation authority to the agencies and institutions of state government employing persons eligible to receive equity adjustments.

SECTION 4. EXPIRATION DATE. Sections 2 and 3 of this Act are effective through June 30, 1993, and after that date are ineffective.

Approved April 3, 1989
Filed April 3, 1989

CHAPTER 660

HOUSE BILL NO. 1034
(Legislative Council)
(Interim Budget Committee on Government Administration)

STATE SALARIES PLANNING

AN ACT to create and enact four new subsections to section 54-44.3-12 of the North Dakota Century Code, relating to duties of the director of the state's central personnel division; to provide for a uniform classification plan and legislative intent regarding certain adjustments; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Four new subsections to section 54-44.3-12 of the North Dakota Century Code are hereby created and enacted to read as follows:

Recognize knowledge, skills, complexity, accountability, and working condition hazards as compensable factors of the state's classification plan, required in the performance of work for all positions in the state classified service.

Develop guidelines for allowing exceptions to the rules of the classification and compensation plans for use when the market salaries of specific positions are not consistent with the state's compensation policy.

Conduct in-state and out-of-state labor market surveys that are representative of the state's classified service occupations to enable the state to position itself accurately against the market.

Communicate classification and compensation policies to the managers and employees in the state-classified service by providing written information on the state's classification and compensation procedures.

SECTION 2. CLASSIFICATION PLAN - LEGISLATIVE INTENT. As of June 30, 1993, all employees in the state-classified service must be under one classification plan. It is the intent of the legislative assembly that employees entering a new class as a result of pay equity implementation receive pay equity increases to maintain a level in the new class corresponding to the level in the prior class.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 1991.

Approved April 3, 1989
Filed April 3, 1989

CHAPTER 661

HOUSE BILL NO. 1033
(Legislative Council)
(Interim Budget Committee on Government Administration)

STATE SALARIES PROCEDURE

AN ACT to create and enact two new subsections to section 54-44.3-12 of the North Dakota Century Code, relating to duties of the director of the state's central personnel division with respect to classification, compensation, and salary administration plans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 54-44.3-12 of the North Dakota Century Code are hereby created and enacted to read as follows:

Develop procedures that, notwithstanding any other law, must be followed by all state agencies and institutions for employees in the state classified service, to ensure that all salaries are paid in a manner consistent with the state's compensation, classification, and salary administration policies.

Consult with state agencies and institutions in the development of salary administration procedures for employees in the state classified service.

Approved April 3, 1989
Filed April 3, 1989

CHAPTER 662

HOUSE BILL NO. 1143

(Committee on State and Federal Government)

(At the request of the Public Employees Retirement System)

PERS ACTUARIES AND COVERAGE

AN ACT to amend and reenact subsection 9 of section 54-52-01, subsections 4, 6, and 7 of section 54-52-04, and subsection 1 of section 54-52-05 of the North Dakota Century Code, relating to eligibility requirements under the public employees retirement system and the authority of the public employees retirement system board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 9 of section 54-52-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and ~~more than~~ at least five months each year.

SECTION 2. AMENDMENT. Subsections 4, 6, and 7 of section 54-52-04 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. The board shall arrange for actuarial and medical advisers for the system. The board shall cause a qualified, competent actuary to be retained on a consulting basis. The actuary shall make ~~a biennial~~ an annual valuation of the liabilities and reserves of the system and a determination of the contributions required by the system to discharge its liabilities and pay the administrative costs under this chapter, and to recommend to the board rates of employer and employee contributions required, based upon the entry age normal cost method, to maintain the system on an actuarial reserve basis; once every ~~even-numbered year~~ five years make a general investigation of the actuarial experience under the system including mortality, retirement, employment turnover, and other items required by the board, and recommend actuarial tables for use in valuations and in calculating actuarial equivalent values based on such investigation; and perform other duties as may be assigned by the board.
6. The board shall select the funding agent or agents and establish an investment agreement contract. The contract must authorize the funding agent or agents to hold and invest moneys for the system. No moneys of the system may be invested by the board. The moneys of the system must be placed for investment only with a firm or

* NOTE: Section 54-52-01 was also amended by section 1 of Senate Bill No. 2149, chapter 664; section 3 of House Bill No. 1586, chapter 223; and section 1 of Senate Bill No. 2461, chapter 663.

firms whose primary endeavor is money management, and only after a trust agreement or contract has been executed. All securities, agreements, contracts, or instruments of value must be delivered to the Bank of North Dakota, or its agents. Except for disbursing money for investment to the funding agent or agents or paying prior service benefits, all costs associated with the hiring, performance measurement, or termination of funding agent or agents ~~management fees, performance measurement fees, actuarial consultant fees, auditors fees, or making withdrawal annuity benefit payments and refunds,~~ the board shall expend money only for administrative purposes by preparing an appropriate voucher and submitting such voucher to the office of management and budget and as limited by the appropriation first made by the legislative assembly.

7. The board shall administer chapters 39-03.1, 54-52.1, and 54-52.2, and may administer other optional employee benefit programs, including a flexible benefits plan, an optional employee short-term disability plan, a long-term care plan, or other optional employee benefit programs as the board deems appropriate.

SECTION 3. AMENDMENT. Subsection 1 of section 54-52-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Every eligible permanent state, county, city, or noncertified school district employee concurring in the plan shall so state in writing and all future eligible employees ~~shall be~~ are participating members. An eligible employee shall be a permanent employee whose services are not limited in duration and who is filling an approved and regularly funded position, who is employed by the state, county, city, or school district, has reached age eighteen, and is employed twenty hours or more per week for more than five months each year.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 663

SENATE BILL NO. 2461
(Senators Satrom, Lips, Lodoen)
(Representative Wentz)

PERS BOARD MEMBERS

AN ACT to amend and reenact subsection 14 of section 54-52-01 and section 54-52-03 of the North Dakota Century Code, relating to the membership of the public employees retirement board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 14 of section 54-52-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14. "Retirement board" or "board" means the ~~five~~ seven persons designated by this chapter as the governing authority for the retirement system created.

SECTION 2. AMENDMENT. Section 54-52-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-03. Governing authority. A state agency is hereby created to constitute the governing authority of the system to consist of a board of ~~five~~ seven persons known as the retirement board. No more than one member of the board ~~shall~~ may be in the employ of a single department, institution, or agency of the state or in the employ of political subdivisions.

1. One member of the board ~~shall~~ must be appointed by the governor to serve a term of five years. The appointee ~~shall~~ must be a North Dakota citizen who is not a state, or school district employee and who by experience is familiar with money management. The citizen member ~~shall be~~ is chairman of the board.
2. One member of the board ~~shall~~ must be appointed by the attorney general from ~~his~~ the attorney general's legal staff and shall serve a term of five years.
3. The state health officer appointed under section 23-01-05 is a member of the board.
4. Three board members ~~shall~~ must be elected by and from among the active participating members. Employees who have terminated their employment for whatever reason are not eligible to serve as elected members of the board under this subsection. Board members ~~shall~~ must be elected to a five-year term, pursuant to an election called ~~for~~ by the board. Notice of board elections ~~shall~~ must be given to all active participating members. The time spent in performing

* NOTE: Section 54-52-01 was also amended by section 1 of House Bill No. 1143, chapter 662; section 1 of Senate Bill No. 2149, chapter 664; and section 3 of House Bill No. 1586, chapter 223.

duties as a board member ~~shall~~ may not be charged against any employee's accumulated annual or any other type of leave.

- 4- 5. One board member must be elected by and from among those persons who are receiving retirement benefits or who are eligible to receive deferred vested retirement benefits under this chapter. The board shall call the election and must give prior notice of the election to the persons eligible to participate in the election pursuant to this subsection. The board member shall serve a term of five years.
6. The chairman of the board shall receive fifty dollars per day for the actual time devoted by ~~him~~ the chairman to the duties of ~~his~~ the chairman's office and each of the other members of the board shall receive an honorarium of fifty dollars for each month during which the board has been in session. This ~~shall be~~ is in addition to any other pay or allowance due the chairman or a member, plus an allowance for expenses they may incur through service on the board.
- 5- 7. A board member shall serve a five-year term and until ~~his~~ the board member's successor qualifies. Each board member ~~shall be~~ is entitled to one vote, and ~~three~~ four of the ~~five~~ seven board members ~~shall~~ constitute a quorum. ~~Three~~ Four votes ~~shall be~~ are necessary for resolution or action by the board at any meeting.
- 6- ~~The state auditor, the state health officer, and the commissioner of banking and financial institutions shall be ex officio, nonvoting, and advisory members of the board.~~

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 664

SENATE BILL NO. 2149
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

TEMPORARY EMPLOYEES UNDER PERS

AN ACT to create and enact a new subsection to section 54-52-01, a new section to chapter 54-52, a new subsection to section 54-52.1-01, and a new section to chapter 54-52.1 of the North Dakota Century Code, relating to participation by temporary employees in the public employees retirement system and the uniform group insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. A new subsection to section 54-52-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Temporary employee" means a governmental unit employee who is not filling an approved and regularly funded position in an eligible governmental unit and whose services may or may not be limited in duration.

SECTION 2. A new section to chapter 54-52 of the North Dakota Century Code is hereby created and enacted to read as follows:

Participation by temporary employees. A temporary employee may elect to participate in the public employees retirement system and receive credit for service after enrollment. The temporary employee shall pay monthly to the fund an amount equal to nine and twelve-hundredths percent times the temporary employee's present monthly salary. An employer may not pay the temporary employee's contributions. A temporary employee may continue to participate as a temporary employee in the public employees retirement system until termination of employment or reclassification of the temporary employee as a permanent employee.

SECTION 3. A new subsection to section 54-52.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Temporary employee" means a governmental unit employee who is not filling an approved and regularly funded position in an eligible governmental unit and whose services may or may not be limited in duration.

SECTION 4. A new section to chapter 54-52.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Participation by temporary employees. A temporary employee may elect to participate in the uniform group insurance program by completing the

* NOTE: Section 54-52-01 was also amended by section 3 of House Bill No. 1586, chapter 223; section 1 of Senate Bill No. 2461, chapter 663; and section 1 of House Bill No. 1143, chapter 662.

necessary enrollment forms and qualifying under the medical underwriting requirements of the program. The temporary employee shall pay monthly to the board the premiums in effect for the coverage being provided. A department, board, or agency may not make a contribution for this coverage.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 665

HOUSE BILL NO. 1321
(Graba, Sorensen, Scherber)

HEALTH DISTRICT EMPLOYEES IN UNIFORM GROUP INSURANCE

AN ACT to amend and reenact sections 54-52-02, 54-52-02.1, subsection 3 of section 54-52.1-01, and section 54-52.1-03.1 of the North Dakota Century Code, relating to participation in the public employees retirement system by a city health department providing health services in a county and city health district and participation by district health units in the uniform group insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 54-52-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-02. Formulation of plan - Exclusion of employees covered by plans in existence. All departments, boards, institutions, commissions, or agencies of the state of North Dakota, the Garrison Diversion Conservancy District, district health units, the supreme court, and the district courts, hereinafter referred to as agency, shall participate in a retirement system which will provide for the payment of benefits to state employees or to their beneficiaries thereby enabling the employees to care for themselves and their dependents and which by its provisions will improve state employment, reduce excessive personnel turnover and offer career employment to high-grade men and women. However, a city health department providing health services in a county and city health district formed under section 23-14-01.1 is not required to participate in the public employees retirement system but may participate in the public employees retirement system under section 54-52-02.1. Employees presently covered by a pension plan or retirement plan to which the state is contributing, except social security, ~~shall~~ are not be eligible for duplicate coverage.

SECTION 2. AMENDMENT. Section 54-52-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-02.1. County, city, and noncertified school district employees authorized to join public employees retirement system.

1. The boards of county commissioners of the several counties, the governing body of any city, a school district, a city health department providing health services in a county and city health district formed under section 23-14-01.1, or any combination thereof is hereby authorized may, on behalf of its permanent employees, and permanent noncertified employees only in the case of school districts, to enter into agreements with the state retirement board for the purpose of extending the benefits of the public employees retirement system, as provided in this chapter, to ~~such those~~ employees. ~~Such an~~ The agreement may, in accordance

* NOTE: Section 54-52-02 was also amended by section 4 of House Bill No. 1586, chapter 223.

with this chapter, contain provisions relating to benefits, contributions, effective date, modification, administration, and other appropriate provisions as the retirement board and the board of county commissioners, the governing body of a city, a school district, a city health department, or any combination thereof ~~shall~~ agree upon, but ~~such~~ the agreement ~~shall~~ must provide that:

- 1- a. The county, city, ~~or~~ school district, city health department, or any combination thereof will contribute on behalf of each eligible employee an amount equal to that provided in section 54-52-06.
 - 2- b. A portion of the moneys, paid by the counties, cities, ~~or~~ school districts, city health departments, or any combination thereof may be used to pay administrative expenses of the retirement board.
2. Notwithstanding any other provision of this chapter, no political subdivision of this state not participating in the public employees retirement system on June 30, 1977, shall thereafter become a participant in the retirement system until an actuarial study is performed under the direction of the board to calculate the cost of that portion of benefits to be paid by the retirement system to the employees of ~~such~~ the political subdivision based on any prior service or on any service after June 30, 1977, and before the date of initial participation in the retirement system, or both; and the political subdivision has adopted a method, approved by the board, to pay the costs determined in this subsection over a period not to exceed twenty-five years from June 30, 1977. No political subdivision may discontinue participation in the fund without first making such payment to the fund as may be necessary for the fund to pay the future benefits of the eligible employees of ~~such~~ the political subdivision as determined on the basis of rules ~~and~~ regulations promulgated adopted by the board.

* SECTION 3. AMENDMENT. Subsection 3 of section 54-52.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Department, board, or agency" means the departments, boards, agencies, or associations of this state, and includes the state's charitable, penal, and higher educational institutions; the Bank of North Dakota; the state mill and elevator association; and counties, cities, district health units, and school districts participating under chapter 54-52.

** SECTION 4. AMENDMENT. Section 54-52.1-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.1-03.1. County, city, noncertified school district employees and employees of any combination thereof ~~Certain political subdivisions~~ authorized to join uniform group insurance program - Employer contribution. The board of county commissioners of any county, the governing body of any city or school district, a district health unit, or any combination thereof, which has elected to participate in the North Dakota public employees retirement system, ~~is hereby authorized~~ may on behalf of its permanent employees, and permanent noncertified employees only in the case of school

* NOTE: Section 54-52.1-01 was also amended by section 1 of Senate Bill No. 2148, chapter 673.

** NOTE: Section 54-52.1-03.1 was also amended by section 2 of Senate Bill No. 2148, chapter 673.

districts, ~~to~~ extend the benefits of the uniform group insurance program, as provided in this chapter, to ~~such~~ those employees. The boards of county commissioners of participating counties and the governing bodies of participating cities, or school districts, district health units, or any combinations thereof may determine the amount of the governing bodies' employer's monthly contribution ~~towards~~ toward the total monthly premium amount required of each eligible participating employee.

Approved April 7, 1989

Filed April 7, 1989

CHAPTER 666

HOUSE BILL NO. 1092
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

PERS BENEFITS VESTING

AN ACT to amend and reenact section 54-52-02.6 and subdivision c of subsection 3 and subdivision d of subsection 4 and subsections 5 and 6 of section 54-52-17 of the North Dakota Century Code, relating to vesting of benefits under the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52-02.6 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-02.6. Repurchase of past service upon reemployment. An individual ~~with at least eight years of service~~ who terminates participation in the plan may elect to receive a refund of contributions and thus forfeit all rights to plan benefits ~~and all rights to repurchase for retirement purposes that service.~~ An individual ~~who terminates with less than eight years of service~~ may, upon within one hundred eighty days of reemployment, elect to repurchase the forfeited past service in accordance with rules established by the board.

* SECTION 2. AMENDMENT. Subdivision c of subsection 3 of section 54-52-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. Early retirement date is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed ~~eight~~ five years of eligible employment.

* SECTION 3. AMENDMENT. Subdivision d of subsection 4 of section 54-52-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- d. Early retirement benefits ~~shall~~ must be calculated as for normal retirement benefits accrued to the date of termination of employment, but ~~shall~~ must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date. A retiree is eligible for early retirement benefits only after having completed ~~eight~~ five years of eligible employment.

* SECTION 4. AMENDMENT. Subsections 5 and 6 of section 54-52-17 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- * NOTE: Section 54-52-17 was also amended by sections 1 and 2 of House Bill No. 1227, chapter 668; section 6 of House Bill No. 1586, chapter 223; section 61 of Senate Bill No. 2056, chapter 69; section 1 of Senate Bill No. 2112, chapter 669; and section 1 of Senate Bill No. 2135, chapter 670.

5. Upon termination of employment after completing ~~eight~~ five years of eligible employment but before normal retirement date, a member who does not elect to receive early retirement benefits is eligible to receive deferred vested retirement benefits payable commencing on the member's normal retirement date equal to one hundred percent of the member's accrued normal retirement benefits.
6. If before retiring a member dies after completing ~~eight~~ five years of eligible employment, the board shall pay the member's account balance to any beneficiary designated by the member with the written consent of the member's spouse, if any. If the member has not designated any beneficiary under this section, the surviving spouse of the member may select one of the following optional forms of payment:
 - a. A lump sum payment of the member's retirement account as of the date of death.
 - b. Payments for sixty months as calculated for the deceased member as if the member was age sixty-five at the date of death.
 - c. Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued normal retirement benefits until the spouse dies.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 667

SENATE BILL NO. 2030
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

STATE RETIREMENT AND INVESTMENT OFFICE

AN ACT to create and enact a new chapter to title 54 and a new section to chapter 54-52 of the North Dakota Century Code, relating to the establishment of the North Dakota state retirement and investment office and the investment of the public employees retirement system fund; to amend and reenact sections 15-39.1-06, 15-39.1-26, 21-10-01, 21-10-02, 21-10-02.1, 21-10-06, 21-10-06.2, 21-10-07, 21-10-09, and 54-52-04 of the North Dakota Century Code, relating to the teachers' fund for retirement, state investment board, and public employees retirement system; to repeal sections 21-10-10 and 54-52-25 of the North Dakota Century Code, relating to the state investment board and public employees retirement system; to provide for a legislative council study; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 54 of the North Dakota Century Code is hereby created and enacted to read as follows:

North Dakota state retirement and investment office. A state agency is hereby created to coordinate the activities of the state investment board and teachers' fund for retirement, and must be known as the state retirement and investment office.

Governing authority. The state retirement and investment office is governed by an administrative board that consists of the governor or designee of the governor, state treasurer, and the president of the board of trustees of the teachers' fund for retirement. The administrative board is responsible for overseeing and operating the agency and may do all things necessary to coordinate the activities of the state investment board and the teachers' fund for retirement. The teachers' fund for retirement board and the state investment board shall maintain their legal identities and authority as otherwise provided by law.

State retirement and investment fund - Cost of operation of agency. A special fund known as the "state retirement and investment fund" must be established for the purpose of defraying administrative expenses of the state retirement and investment office. The actual amount of administrative expenses incurred by the state retirement and investment office must be paid from the respective funds listed under section 21-10-06 and are hereby appropriated to the state retirement and investment fund in proportion to the services rendered for each fund as estimated by the administrative board. The amount necessary to pay all administrative expenses of the state retirement and investment office must be paid from the state retirement and

investment fund in accordance with the agency's appropriation authority. Any interest income earned on the state retirement and investment fund must be credited to the fund.

SECTION 2. AMENDMENT. Section 15-39.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-06. Organization of board. The board may hold meetings as necessary for the transaction of business and a meeting may be called by the president or any two members of the board upon reasonable notice to the other members of the board. The president for the ensuing year must be elected at the first meeting following July first of each year. The board may employ an administrator, who need not be a member of the board and who shall perform duties as the board prescribes.

SECTION 3. AMENDMENT. Section 15-39.1-26 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-39.1-26. Investment of moneys in fund. Investment of the fund shall be under the supervision of the state investment board in accordance with chapter 21-10. Such moneys must be placed for investment only with a firm or firms whose primary endeavor is money management, and only after a trust agreement or contract has been executed. Such moneys may be expended by the state investment board by the preparation of an appropriate voucher and submitting such voucher to the office of management and budget, except that any related investment counseling fees, trustee fees, or custodial fees charged by money management firms must be paid out of moneys in the fund without the need for a prior appropriation or the submission of a voucher. Investment costs may be paid directly from the fund, and are hereby appropriated for that purpose, in accordance with section 21-10-06.2.

SECTION 4. AMENDMENT. Section 21-10-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-01. State investment board - Membership - Term - Compensation. The North Dakota state investment board consists of the governor, the state treasurer, the commissioner of university and school lands, the chairperson of the workers compensation bureau, the commissioner of insurance, the executive secretary three members of the teachers' fund for retirement board or the board's designees who need not be members of the fund as selected by that board, and three of the elected members who are experienced in, and have considerable knowledge of the public employees retirement system board as selected by that board. The state investment board may establish an advisory council comprised of individuals who are experienced and knowledgeable in the field of investments, and who are not otherwise employed by the state of North Dakota. The governor shall appoint the members with investment experience to three year, two year, and one year terms respectively on January 31, 1989. Thereafter, the appointed members shall serve four year terms. The appointed members. The state investment board shall determine the responsibilities of the advisory council. Members of the advisory council are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council the members of the advisory board of the Bank of North Dakota and necessary mileage and travel expenses as provided in sections 54-06-09 and 44-08-04.

SECTION 5. AMENDMENT. Section 21-10-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-02. Board - Powers and duties. The board shall be charged with the investment of the funds enumerated in section 21-10-06. It shall approve general types of securities for investment by these funds and set policies and procedures regulating securities transactions on behalf of the various funds. Representatives of the funds enumerated in section 21-10-06 may make recommendations to the board in regard to investments. The board or its designated agents shall be custodian of securities purchased on behalf of funds under the management of the board. The board may appoint an investment director or advisory service who must be experienced in, and hold considerable knowledge of, the field of investments. The investment director or advisory service shall serve at the pleasure of the board. The investment director or advisory service may be an individual, corporation, partnership, or any legal entity which meets the qualifications established herein. ~~The board may appoint, in addition to an investment director or advisory service, such personnel as it deems necessary to properly fulfill their responsibility.~~ Existing department facilities for making traditional investments within the state shall continue to function subject however to supervision and management of the board. The board may authorize the investment director to lend securities held by the funds. These securities must be collateralized as directed by the board.

SECTION 6. AMENDMENT. Section 21-10-02.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-02.1. Board - Policies - Investment goals and objectives. The board shall establish policies on investment goals and objectives for the funds enumerated in section 21-10-06. The policies must provide for:

1. The definition and assignment of duties and responsibilities to advisory services and persons employed by the board.
2. Acceptable rates ~~or~~ of return, liquidity, and levels of risk.
3. Long-range asset allocation goals.
4. Guidelines for the selection and redemption of investments.
5. Investment diversification, investment quality, qualification of advisory services, and amounts to be invested by advisory services.
6. The type of reports and procedures to be used in evaluating performance.

Each fund enumerated in section 21-10-06 shall submit to the board the fund's policies on investment goals and objectives. The state investment board shall develop an asset allocation plan for each fund in accordance with the investment goals and objectives of the fund, subject to the approval of the governing body of the fund.

SECTION 7. AMENDMENT. Section 21-10-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-06. Funds under management of board - Accounts. The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement.
3. State fire and tornado fund.
4. ~~Workmen's~~ Workers' compensation fund.
5. Veterans' home improvement fund, in accordance with section 37-15-14.1.
6. ~~National guard training area and facility development trust fund.~~
7. ~~National guard tuition trust fund.~~
7. Public employees retirement system.
8. Insurance regulatory trust fund.

Separate accounting must be maintained for each of the above funds when. When it is deemed advantageous in the purchase, sale, or exchange of securities, securities belonging to one or more of the funds or the Bank of North Dakota may be purchased, sold, or exchanged as part of a single transaction. In the event of such sale, the respective funds must immediately be credited with their proportionate share of the proceeds. In the event of such purchase or exchange, title to or credit for the securities shall be taken in the name of the individual funds, proportionate to their share of the total purchase price.

The board of university and school lands shall consult with the state investment board or the director thereof on investment policies; and the board of university and school lands may delegate authority to the state investment board or the investment director to make such purchases, sales, or exchanges on its behalf the moneys of the individual funds may be commingled for investment purposes.

The state investment board may provide investment services to, and manage the money of, any agency, institution, or political subdivision of the state, subject to agreement with the industrial commission. The scope of services to be provided by the state investment board to the agency, institution, or political subdivision must be specified in a written contract. The state investment board is authorized to charge a fee for providing investment services and any revenue collected must be deposited in the state retirement and investment fund.

SECTION 8. AMENDMENT. Section 21-10-06.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-06.2. Investment costs. ~~Investment~~ The amounts necessary to pay for investment costs, such as investment counseling fees, trustee fees, custodial fees, performance measurement fees, expenses associated with money manager searches, expenses associated with onsite audits and reviews of investment managers, and asset allocation expenses, charged by money

management firms or investment consultants under contract with incurred by the state investment board are hereby appropriated and must be paid directly out of the funds listed in section 21-10-06 by the fund incurring the expense.

SECTION 9. AMENDMENT. Section 21-10-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-07. Legal investments. The state investment board shall apply the prudent investor rule in investing for funds under its supervision. The "prudent investor rule" means that in making investments the fiduciaries shall exercise the judgment and care, under the circumstances then prevailing, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income. The retirement funds belonging to the teachers' fund for retirement and the public employees retirement system must be invested exclusively for the benefit of their members and in accordance with the respective funds' investment goals and objectives.

SECTION 10. AMENDMENT. Section 21-10-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-10-09. Personal profit prohibited - Penalty. No member, officer, agent, or employee of the state investment board shall ~~accept any gift, commission, or compensation; other than that authorized by this chapter, for services performed under the provisions of this chapter, nor~~ profit in any manner from transactions on behalf of the funds. Any person violating any of the provisions of this section shall be guilty of a class A misdemeanor.

SECTION 11. AMENDMENT. Section 54-52-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52-04. Board authority.

1. The board shall adopt rules necessary to implement this chapter, and to manage the system, subject to the limitations of this chapter. The board has the powers and privileges of a corporation, including the right to sue and be sued in its own name as the board. The venue of all actions in which the board is a party must be Burleigh County, North Dakota.
2. The board shall appoint an executive director to serve at its discretion. The executive director shall be bonded by the state bonding fund in the amount required by the board and shall perform such duties as assigned by the board.
3. The board shall authorize the creation of whatever staff it deems necessary for sound and economical administration of the system. The executive director shall hire the staff, subject to the approval of the board.
4. The board shall arrange for actuarial and medical advisers for the system. The board shall cause a qualified, competent actuary to be retained on a consulting basis. The actuary shall make a biennial valuation of the liabilities and reserves of the system and a

determination of the contributions required by the system to discharge its liabilities and pay the administrative costs under this chapter, and to recommend to the board rates of employer and employee contributions required, based upon the entry age normal cost method, to maintain the system on an actuarial reserve basis; once every even-numbered year make a general investigation of the actuarial experience under the system including mortality, retirement, employment turnover, and other items required by the board, and recommend actuarial tables for use in valuations and in calculating actuarial equivalent values based on such investigation; and perform other duties as may be assigned by the board.

5. The state shall provide the board with the retirement systems office or offices to be used for the meetings of the board and for the general purposes of the administrative personnel.
6. The board shall select the funding agent or agents and establish an investment agreement contract. The contract must authorize the funding agent or agents to hold and invest moneys for the system. No moneys of the system may be invested by the board. The moneys of the system must be placed for investment only with a firm or firms whose primary endeavor is money management, and only after a trust agreement or contract has been executed. All securities, agreements, contracts, or instruments of value must be delivered to the Bank of North Dakota, or its agents. Except for disbursing money for investment to the funding agent or agents or funds necessary for paying prior service benefits, funding agent or agents management fees, performance measurement fees, actuarial consultant fees, auditors fees, or and making withdrawal payments and refunds, the board shall expend money only for administrative purposes by preparing an appropriate voucher and submitting such voucher to the office of management and budget and as limited by the appropriation first made by the legislative assembly are hereby appropriated from the retirement fund for those purposes. The amount necessary to pay the consulting fees related to the uniform group insurance program is hereby appropriated from the insurance premiums received by the board.
7. The board shall administer chapters 39-03.1, 54-52.1, and 54-52.2.
8. The board annually shall report in accordance with section 21-10-06.1 the investment performance of the funds ~~that it administers~~ fund and distribute a copy to each participant.

SECTION 12. A new section to chapter 54-52 of the North Dakota Century Code is hereby created and enacted to read as follows:

Investment of moneys in fund. Investment of the fund is under the supervision of the state investment board in accordance with chapter 21-10. Such moneys must be placed for investment only with a firm or firms whose endeavor is money management, and only after a trust agreement or contract has been executed. Investment costs may be paid directly from the fund, and are hereby appropriated for that purpose, in accordance with section 21-10-06.2.

SECTION 13. REPEAL. Section 54-52-25 of the North Dakota Century Code and section 21-10-10 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 14. LEGISLATIVE COUNCIL STUDY. The legislative council shall direct the committee on public employees retirement programs to study the feasibility and desirability of various options relating to the consolidation of various organizational and investment functions of the public employees retirement system, teachers' fund for retirement, and state investment board. The committee shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-second legislative assembly.

SECTION 15. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 668

HOUSE BILL NO. 1227

(Representatives Martinson, A. Hausauer, L. Hanson)
(Senators Olson, Satrom)**PERS POSTRETIREMENT ADJUSTMENTS**

AN ACT to create and enact a new section to chapter 54-52 of the North Dakota Century Code, relating to postretirement adjustments under the public employees retirement system; to amend and reenact subsection 2 and paragraphs 1, 2, and 3 of subdivision a of subsection 4 of section 54-52-17 of the North Dakota Century Code, relating to computation of benefits under the public employees retirement system; and to provide for application of this Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 2 of section 54-52-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Retirement benefits ~~shall be~~ are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any ~~sixty consecutive~~ thirty-six months employed during the last one hundred twenty months of employment. Months not employed ~~or months where employment was not full time shall be~~ are excluded in arriving at the ~~sixty thirty-six~~ sixty thirty-six months to be used for the purpose of computing an average. If the participating member has worked for less than ~~sixty thirty-six~~ sixty thirty-six months at the normal retirement date, the final average salary ~~shall be~~ is the average salary for the total months of employment.

* SECTION 2. AMENDMENT. Paragraphs 1, 2, and 3 of subdivision a of subsection 4 of section 54-52-17 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- (1) Service benefit equals one and ~~one-half~~ sixty-five hundredths percent of final average salary multiplied by the number of years of service employment.
- (2) Prior service benefit equals one and ~~one-half~~ sixty-five hundredths percent of final average salary multiplied by the number of years of prior service employment.
- (3) All participants who retired before July 1, ~~1987~~ 1989, are entitled to benefits calculated at one and ~~one-half~~ sixty-five hundredths percent of final average salary, multiplied by the number of years of service employment, with the increased benefits payable beginning July 1, ~~1987~~ 1989.

* NOTE: Section 54-52-17 was also amended by sections 2, 3, and 4 of House Bill No. 1092, chapter 666; section 6 of House Bill No. 1586, chapter 223; section 61 of Senate Bill No. 2056, chapter 69; section 1 of Senate Bill No. 2112, chapter 669; and section 1 of Senate Bill No. 2135, chapter 670.

SECTION 3. A new section to chapter 54-52 of the North Dakota Century Code is hereby created and enacted to read as follows:

Postretirement adjustments. An individual who, on June 30, 1989, is receiving retirement benefits under this chapter is entitled to receive an increase in benefits equal to five and seventy-six hundredths percent of the individual's present benefits.

SECTION 4. APPLICATION OF ACT. Section 3 of this Act applies to benefits payable after June 30, 1989.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 669

SENATE BILL NO. 2112
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

PERS DISABILITY BENEFIT ELIGIBILITY

AN ACT to amend and reenact subdivision d of subsection 3 of section 54-52-17 of the North Dakota Century Code, relating to eligibility for disability retirement benefits under the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subdivision d of subsection 3 of section 54-52-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

d. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules and regulations of the board, and has completed at least one hundred eighty days of eligible employment. No A member shall be is eligible for to receive disability retirement benefits resulting from a disability unless he shall also be only if the member:

- (1) Became disabled during the period of eligible employment;
- (2) Is determined eligible for benefits under the Social Security Act as amended; and
- (3) Applies for disability retirement benefits within twelve months of the date the member terminates employment.

Approved March 17, 1989
Filed March 17, 1989

* NOTE: Section 54-52-17 was also amended by sections 2, 3, and 4 of House Bill No. 1092, chapter 666; sections 1 and 2 of House Bill No. 1227, chapter 668; section 6 of House Bill No. 1586, chapter 223; section 61 of Senate Bill No. 2056, chapter 69; and section 1 of Senate Bill No. 2135, chapter 670.

CHAPTER 670

SENATE BILL NO. 2135
(Committee on Industry, Business and Labor)
(At the request of the Public Employees Retirement System)

DISABILITY BENEFITS COMPUTATION

AN ACT to amend and reenact subdivision e of subsection 4 of section 54-52-17 of the North Dakota Century Code, relating to computation of disability benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subdivision e of subsection 4 of section 54-52-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- e. Disability retirement benefits ~~shall be calculated at sixty are~~ seventy percent of the member's final average salary, reduced by the member's primary benefits under the Social Security Act as amended, and by any ~~workmen's~~ worker's compensation benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars.

Approved April 12, 1989
Filed April 13, 1989

- * NOTE: Section 54-52-17 was also amended by sections 2, 3, and 4 of House Bill No. 1092, chapter 666; sections 1 and 2 of House Bill No. 1227, chapter 668; section 6 of House Bill No. 1586, chapter 223; section 61 of Senate Bill No. 2056, chapter 69; and section 1 of Senate Bill No. 2112, chapter 669.

CHAPTER 671

SENATE BILL NO. 2127
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

HIGHER EDUCATION RETIREMENT PRIOR SERVICE CREDIT

AN ACT to amend and reenact subsections 1 and 3 of section 54-52-17.2 of the North Dakota Century Code, relating to eligibility for accrual of benefits between retirement systems and purchase of prior service credit for members of certain public retirement systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsections 1 and 3 of section 54-52-17.2 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. a. For the purpose of determining eligibility for benefits under this chapter, an employee's years of service employment is the total of the years of service employment earned in the public employees retirement system and the years of service credit earned in any number of the following:
 - (1) The teachers' fund for retirement.
 - (2) The highway patrolmen's retirement system.
 - (3) The teachers' insurance and annuity association of America - college retirement equities fund (TIAA - CREF), for service credit earned while employed by North Dakota institutions of higher education.
- b. If an employee terminates eligible employment under the system, if that employee has not received a refund of the employee's account balance, and if the employee begins eligible employment in a plan described in paragraph 1 or, 2, or 3 of subdivision a, that employee may elect to remain an inactive member of the system without refund of the employee's account balance. The election must be made within ninety days after beginning the eligible employment or by October 1, 1987, whichever is later. The board shall terminate the inactive status of an employee under this subdivision if the employee gains eligible employment under this chapter or if the employee terminates eligible employment under a plan described in paragraph 1 or, 2, or 3 of subdivision a.
- c. An employee who has service credit in the system and in any number of the plans described in paragraphs 1 and, 2, and 3 of subdivision a is entitled to benefits under this chapter calculated by using the certified salaries of the retirement

* NOTE: Section 54-52-17.2 was also amended by section 7 of House Bill No. 1586, chapter 223.

plan of last membership. The board shall calculate benefits for an employee under this subsection by using only those years of service employment earned under this chapter.

3. Under rules adopted by the board, an individual whose service credit was canceled when that individual received a refund of assessments at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 1 ~~or~~, 2, or 3 of subdivision a of subsection 1, repurchase that service credit that was canceled.

Approved March 17, 1989

Filed March 17, 1989

CHAPTER 672

HOUSE BILL NO. 1093
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

PERS ADDITIONAL CREDIT PURCHASE

AN ACT to create and enact a new section to chapter 54-52 of the North Dakota Century Code, relating to the purchase of additional credit under the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-52 of the North Dakota Century Code is hereby created and enacted to read as follows:

Purchase of additional credit.

1. A participating member may elect to purchase credit, within one hundred eighty days of beginning eligible employment or by December 31, 1989, whichever is later, for years of service and prior service for which the participating member is not presently receiving credit. A member is entitled to purchase additional credit under this section for the following service or prior service:
 - a. Active employment in the armed forces of the United States for up to four years of credit.
 - b. Employment as a permanent employee by a governmental unit that does not participate in the public employees retirement system under this chapter.
 - c. Employment as a permanent employee by a political subdivision participating in the public employees retirement system which did not pay the cost of past service benefits under section 54-52-02.1.
 - d. Service the participating member did not elect to repurchase upon reemployment under section 54-52-02.6.
 - e. Service of an eligible employee, who exercised the privilege to withdraw from the predecessor plan to the public employees retirement system under subsection 10 of section 54-52-17 as created by section 13 of chapter 499 of the 1977 Session Laws, from July 1, 1977, to the date the eligible employee became a participating member of the public employees retirement system. However, participating members who were eligible, under section 54-52-19.2, to repurchase prior service credit forfeited by withdrawal from the predecessor plan to the public employees

retirement system are not eligible to purchase that prior service credit under this section.

2. The participating member may purchase credit under this section by paying to the board an amount equal to nine and twelve-hundredths percent, times the participating member's monthly salary on the date of the participating member's election to purchase, times the number of months of credit being purchased, plus interest at a rate determined by rules established by the board.

Approved March 9, 1989

Filed March 9, 1989

CHAPTER 673

SENATE BILL NO. 2148
(Committee on Political Subdivisions)
(At the request of the Public Employees Retirement System)

POLITICAL SUBDIVISIONS' EMPLOYEES IN UNIFORM GROUP INSURANCE

AN ACT to amend and reenact subsection 3 of section 54-52.1-01 and section 54-52.1-03.1 of the North Dakota Century Code, relating to participation by political subdivisions in the uniform group insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 3 of section 54-52.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Department, board, or agency" means the departments, boards, agencies, or associations of this state, and includes the state's charitable, penal, and higher educational institutions; the Bank of North Dakota; the state mill and elevator association; and counties, cities, and school districts participating under chapter 54-52.

** SECTION 2. AMENDMENT. Section 54-52.1-03.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.1-03.1. County, city, ~~noncertified~~ and school district employees and employees of any combination thereof authorized to join uniform group insurance program - Employer contribution. The board of county commissioners of any county, the governing body of any city or school district, or any combination thereof, ~~which has elected to participate in the North Dakota public employees retirement system;~~ is hereby authorized on behalf of its permanent employees, and permanent ~~noncertified~~ employees only in the case of school districts, ~~to may extend the benefits of the uniform group insurance program, as provided in under this chapter, to such its permanent employees,~~ subject to a minimum period of participation of twenty-four months. If the board of county commissioners of a participating county or the governing body of any participating city, school district, or any combination thereof, withdraws from participation in the uniform group insurance program, that entity may not subsequently renew participation for a period of at least twenty-four months from the date of withdrawal. The boards of county commissioners of participating counties and the governing bodies of participating cities, school districts, or any combinations thereof may determine the amount of the governing bodies' monthly contribution towards the total monthly premium amount required of each eligible participating employee.

Approved March 14, 1989
Filed March 15, 1989

* NOTE: Section 54-52.1-01 was also amended by section 3 of House Bill No. 1321, chapter 665.

** NOTE: Section 54-52.1-03.1 was also amended by section 4 of House Bill No. 1321, chapter 665.

CHAPTER 674

HOUSE BILL NO. 1156
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

UNIFORM GROUP INSURANCE ELIGIBLE EMPLOYEE

AN ACT to amend and reenact subsection 4 of section 54-52.1-01 of the North Dakota Century Code, relating to the definition of an eligible employee under the uniform group insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 4 of section 54-52.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. "Eligible employee" means every permanent employee who is employed by a governmental unit, as that term is defined in section 54-52-01. "Eligible employee" includes members of the legislative assembly, judges of the supreme court, paid members of state or political subdivision boards, commissions, or associations, full-time employees of political subdivisions, elective state officers as defined by subsection 2 of section 54-06-01, and disabled permanent employees who are receiving compensation from the North Dakota ~~workmen's~~ workers' compensation fund. As used in this subsection, "permanent employee" means one whose services are not limited in duration and who is filling an approved and regularly funded position in a governmental unit, and is employed at least ~~twenty~~ seventeen and one-half hours per week and at least five months each year.

Approved March 9, 1989
Filed March 9, 1989

* NOTE: Subsection 4 of section 54-52.1-01 was also amended by section 62 of Senate Bill No. 2056, chapter 69.

CHAPTER 675

SENATE BILL NO. 2412
(Senators Satrom, Redlin)
(Representatives V. Olson, R. Hausauer)

UNIFORM GROUP INSURANCE SUBGROUPS

AN ACT to amend and reenact section 54-52.1-02 and subsection 3 of section 54-52.1-03 of the North Dakota Century Code, relating to establishing subgroups in the uniform group insurance program; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.1-02. Uniform group insurance program created - Formation into subgroups. In order to promote the economy and efficiency of employment in the state's service, reduce personnel turnover, and offer an incentive to high-grade men and women to enter and remain in the service of state employment, there is hereby created a uniform group insurance program. The uniform group must be composed of eligible and retired employees, and be formed to provide hospital benefits coverage, medical benefits coverage, and life insurance benefits coverage in the manner set forth in this chapter. The uniform group may be divided into the following subgroups at the discretion of the board: ~~The subgroups may be established as follows:~~

1. ~~Active eligible employee group medical~~ Medical and hospital benefits coverage group consisting of active eligible employees and retired employees not eligible for medicare. In determining premiums for coverage under this subsection for active eligible employees, the total projected premium requirements of the entire subgroup must be reduced by the projected aggregate monthly credit toward hospital and medical benefits coverage allowed retired employees not eligible for medicare under section 5 of Senate Bill No. 2068 as approved by the fifty-first legislative assembly. The reduced premium requirements must then be divided by the number of subgroup members to determine the premiums for active eligible employees. Premiums for coverage under this subsection for retired employees not eligible for medicare must be calculated based on the projected premium requirements of the entire subgroup less the total projected premium income as determined under this subsection for active eligible employees.
2. Retired ~~eligible medicare-eligible~~ employee group medical and hospital benefits coverage.
3. Active eligible employee life insurance benefits coverage.

4. Retired ~~eligible~~ employee life insurance benefits coverage.
5. Terminated employee continuation group medical and hospital benefits coverage.
6. Terminated employee conversion group medical and hospital benefits coverage.

* SECTION 2. AMENDMENT. Subsection 3 of section 54-52.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Upon the termination of eligible employment of a member of the legislative assembly, or upon the retirement of an eligible employee who is entitled to a retirement allowance from a department, board, or agency, or upon the termination of employment of an eligible employee not of retirement age who, upon retirement, will receive a deferred retirement allowance from a department, board, or agency, that employee or that employee's surviving spouse may continue as a member of the uniform group under this chapter. ~~The department, board, or agency may not make a contribution for this coverage, and each eligible~~ Each retired employee and each former member of the legislative assembly or the surviving spouse of that retired employee or former legislative assembly member shall pay directly to the board the premiums in effect for the coverage then being provided.

SECTION 3. LEGISLATIVE INTENT - POTENTIAL DEFICIENCY. The fifty-first legislative assembly recognizes that the recommended increase for health insurance premiums did not anticipate creating a single actuarial pool for the active employees and pre-medicare retirees as proposed in this Act. The legislative assembly also appreciates the difficulty in projecting the actual ending balance in the health insurance fund several months in advance of the end of the biennium and recognizes the possibility exists that sufficient funds may not be available in the health insurance fund to absorb the costs of implementing this Act. However, the legislative assembly understands that an equal probability exists that certain savings may occur that could provide sufficient resources for implementation of this Act. Therefore, it is the intent of the legislative assembly that existing appropriations should be utilized to implement the provisions of this Act. If sufficient funds are not available to fully defray the implementation costs for the biennium beginning July 1, 1989, and ending June 30, 1991, the public employees retirement system shall present a deficiency appropriation request to the fifty-second legislative assembly.

Approved April 28, 1989

Filed April 28, 1989

* NOTE: Section 54-52.1-03 was also amended by section 4 of Senate Bill No. 2068, chapter 445.

CHAPTER 676

HOUSE BILL NO. 1344
(R. Larson)

HMOs UNDER UNIFORM GROUP INSURANCE

AN ACT to amend and reenact section 54-52.1-04.1 of the North Dakota Century Code, relating to health maintenance organization contracts under the uniform group insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52.1-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.1-04.1. Health maintenance organization contract - Membership option. Notwithstanding the provisions of section 54-52.1-04, the board may contract with one or more health maintenance organizations to provide eligible employees the option of membership in a health maintenance organization. If it makes such a contract, the board may not require that the health maintenance organization be federally qualified if the health maintenance organization has a certificate of authority issued by the North Dakota commissioner of insurance. The contract or contracts ~~shall~~ must be included in the uniform group insurance program.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 677

SENATE BILL NO. 2179
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

UNIFORM GROUP INSURANCE FUND AND CONTRACTS

AN ACT to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to the establishment of a contingency reserve fund in the uniform group insurance program; to amend and reenact section 54-52.1-04.2 of the North Dakota Century Code, relating to the bidding of administrative services only and third party administrator contracts; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-52.1-04.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-52.1-04.2. Self-insurance plan for hospital and medical benefits coverage. The board may establish a self-insurance plan for providing health insurance benefits coverage only under an administrative services only (ASO) contract or a third party administrator (TPA) contract under the uniform group insurance program, if it is determined by the board that an ASO or TPA plan is less costly than the lowest bid submitted by a carrier for underwriting the plan with equivalent contract benefits. Upon establishing a self-insurance plan, the board shall solicit bids for an administrative services only or third party administrator contract only every other biennium, and the board is authorized to renegotiate an existing administrative services only or third party administrator contract during the interim. In addition, individual stop-loss coverage insured by a carrier authorized to do business in this state must be made part of any self-insured plan. All bids under this section are due no later than January first, and must be awarded no later than March first, preceding the end of each biennium. All bids under this section must be opened at a public meeting of the board.

SECTION 2. A new section to chapter 54-52.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Contingency reserve fund - Continuing appropriation. The board shall establish under a self-insurance plan a contingency reserve fund to provide for adverse fluctuations in future charges, claims, costs, or expenses of the uniform group insurance program. The board shall determine the amount necessary to provide a balance in the contingency reserve fund equal to three and one-half months of claims paid based on the average monthly claims paid during the twelve-month period immediately preceding March first of each year, and report its determination, by March fifteenth of each year, to each session of the legislative assembly or the committee designated by the legislative council to hear the report in the interim between legislative sessions. The board may arrange for the services of an actuarial consultant to assist the board in making the determination. All moneys in the contingency reserve fund, not otherwise appropriated, are appropriated for the payment of claims and other costs of the uniform group insurance program during periods of adverse claims or cost fluctuations.

CHAPTER 678

HOUSE BILL NO. 1158
(Committee on State and Federal Government)
(At the request of the Public Employees Retirement System)

INSURANCE NONDISCRIMINATION TESTING

AN ACT to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to conducting nondiscrimination tests under the state health and life insurance programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-52.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Administrative - Nondiscrimination testing for health and life insurance programs. The board shall be responsible for the nondiscrimination testing required under section 89 of the Internal Revenue Code. The board may engage the services of a consultant to assist the board in its administration of this section. The various state departments, boards, agencies, and commissions shall provide the board with requested information so the board may carry out its duties under this section.

SECTION 2. LEGISLATIVE INTENT. It is the intent of the fifty-first legislative assembly that the public employees retirement system may spend \$100,000, or so much thereof as may be necessary, from the health insurance fund for conducting nondiscrimination testing to comply with section 89 of the Internal Revenue Code. If sufficient funds are not available to fully defray the costs of section 89 testing and pay the necessary health insurance premiums for the biennium beginning July 1, 1989, and ending June 30, 1991, the public employees retirement system shall present a deficiency appropriation request to the fifty-second legislative assembly.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 679

SENATE BILL NO. 2250
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

PERS PRETAX BENEFITS PROGRAM

AN ACT to create and enact a new chapter to title 54 of the North Dakota Century Code, relating to the establishment of a pretax benefits program to be administered by the public employees retirement system board; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 54 of the North Dakota Century Code is hereby created and enacted to read as follows:

Pretax benefits program for public employees. The public employees retirement system board may establish a pretax benefits program for all state employees under which a state employee may reduce the employee's salary and elect benefits to the extent of the reduction. The board may permit political subdivisions to participate in the pretax benefits program. Any participating political subdivision shall comply with the program conditions and pay all fees established by the board.

Authority of board. The board shall determine benefits to be offered under the pretax benefits program, accept proposals from qualified providers, retain consultants, and do all things necessary to administer the pretax benefits program and preserve its tax-exempt status.

Employer savings used to defray expenses of administering program - Appropriation. The implementation of a pretax benefits program will result in savings to the state as a result of the diminution of the state's employer contribution to the Federal Insurance Contribution Act tax. The office of management and budget shall transfer funds from the savings accruing to the agencies' salaries and wages line item to a payroll clearing account. The office of management and budget shall transfer funds from the payroll clearing account to the board as necessary to defray the reasonable expenses of administering the program under this chapter. Any revenue collected by the board from participating political subdivisions must be used to defray the expenses of administering the program under this chapter. The amount necessary to pay the consultants retained by the board are hereby appropriated from the savings and revenue generated by the program. All other expenses of administering the program must be paid in accordance with the agency's appropriation authority as established by the legislature.

Effect of participation on other state administered employee benefits programs. For all purposes under any state administered retirement program, disability program, life insurance program, or other employee benefits program, the compensation or gross compensation of any employee participating in any pretax benefits program is deemed to be the compensation or gross compensation which the employee would have received if the employee was not participating in the pretax benefits program.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 680

SENATE BILL NO. 2310
(Senators Mathern, Waldera)
(Representatives Scherber, Haugland, Oban)

STATE EMPLOYEE UNCOMPENSATED FAMILY LEAVE

AN ACT to provide uncompensated family leave to state employees and protect employment and benefit rights and to allow state employees to use certain other leave to care for a child, spouse, or parent with a serious health condition; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Child" means a child by birth, an adopted or foster child, a stepchild, or a legal ward, who is:
 - a. Less than eighteen years of age; or
 - b. More than seventeen years of age and incapable of providing self-care because of a serious health condition.
2. "Employee" means an individual employed in this state by an employer, whose employment is not limited in duration, who is employed for an average of at least twenty hours per week, and who has been employed by the same employer for at least one year.
3. "Employer" means the state but does not include any political subdivision of the state.
4. "Employment benefit" means all benefits provided or made available to employees by an employer, including education, health care, insurance, leave, and retirement benefits.
5. "Health care provider" means a registered nurse licensed under chapter 43-12.1, a physician licensed under chapter 43-17, a psychologist licensed under chapter 43-32, or a licensed certified social worker licensed under chapter 43-41.
6. "Health care services" means services rendered by a health care provider within the scope of the provider's license, including long-term care and hospice and hospital care.
7. "Parent" means a birth parent, foster parent, adoptive parent, or stepparent.
8. "Serious health condition" means a disabling physical or mental illness, injury, impairment, or condition involving:

- a. Inpatient care in a hospital licensed under chapter 23-16 or operated by the United States or this state, long-term care facility as defined in section 50-10.1-01, or hospice program licensed under chapter 23-17.4; or
 - b. Outpatient care that requires continuing treatment by a health care provider.
9. "Spouse" means an employee's husband or wife.

SECTION 2. Family leave.

1. An employer shall grant an employee's request for a family leave of absence for any of the following reasons:
 - a. To care for the employee's child by birth, if the leave begins within sixteen weeks of the child's birth.
 - b. To care for a child placed with the employee, by a child-placing agency licensed under chapter 50-12, for adoption or as a precondition to adoption under section 14-15-12, but not both, or for foster care, if the leave begins within sixteen weeks of the child's placement.
 - c. To care for the employee's child, spouse, or parent if the child, spouse, or parent has a serious health condition.
2. For any combination of reasons specified in subsection 1, an employee may take family leave to be determined by the employer on a pro rata basis according to a formula based on the average number of hours per week that the employee is employed, whereby in any twelve-month period an employee who is employed for an average of twenty hours per week during the preceding twelve months may take not more than two months of family leave and an employee who is employed for an average of forty or more hours per week during the preceding twelve months may take not more than four months of family leave.
3. In any case in which a husband and wife entitled to family leave under this Act are employed by the same employer, the aggregate period of family leave to which both are entitled may be limited by the employer to four months during any twelve-month period.
4. An employee shall reasonably consider the needs of the employer in scheduling family leave under this section or in using leave under section 3 of this Act.
5. The family leave required by this Act is not required to be granted with pay unless otherwise specified by agreement between the employer and employee, by collective bargaining agreement, or by employer policy.
6. The family leave required by this Act supplements any leave otherwise available to an employee.

SECTION 3. Use of other available leave for care of parent, spouse, or child. An employer that provides leave for its employees for illnesses or

other medical or health reasons shall grant an employee's request to use that leave to care for the employee's child, spouse, or parent if the child, spouse, or parent has a serious health condition. An employee may take not more than forty hours of leave under this section in any twelve-month period. The employer shall compensate the employee for leave used by the employee under this section on the same basis as the employee would be compensated if the leave had been taken due to the employee's own illness.

SECTION 4. Notice to employer.

1. If an employee intends to request family leave for the reasons specified in subdivision a or b of subsection 1 of section 2 of this Act, the employee, in a reasonable and practicable manner, shall give the employer advance notice of the expected birth or placement.
2. If an employee intends to take family leave for the reason specified in subdivision c of subsection 1 of section 2 of this Act, the employee shall:
 - a. Make a reasonable effort to schedule the planned care so that it does not unduly disrupt the employer's operations, subject to the approval of the health care provider to the child, spouse, or parent; and
 - b. Give the employer advance notice of the planned care in a reasonable and practicable manner.

SECTION 5. Certification for leave to care for child, spouse, or parent.

1. If an employee requests family leave for a reason described in subdivision c of subsection 1 of section 2 of this Act or leave under section 3 of this Act, the employer may require the employee to provide certification, as described in subsection 2 of this section, from the provider of health care to the child, spouse, or parent.
2. An employer may not require certification of more than:
 - a. That the child, spouse, or parent has a serious health condition.
 - b. The date the serious health condition commenced and its probable duration.
 - c. Within the knowledge of the health care provider, the medical facts regarding the serious health condition.

SECTION 6. Continued health coverage. During a period that an employee takes family leave, the employer shall continue to make any group health insurance coverage or health care plan for its employees and their dependents available to the employee and the employee's dependents under the conditions that applied immediately before the family leave began. The employer is not required to pay any cost of insurance or health care for that employee and the employee's dependents while the employee is on family leave.

SECTION 7. Position upon return from leave.

1. When an employee returns from family leave the employer shall immediately place the employee in an employment position as follows:
 - a. If the employment position the employee held immediately before the family leave began is vacant, in that position.
 - b. If the employment position which the employee held immediately before the family leave began is not vacant, in an employment position having equivalent compensation, benefits, hours of employment, and other terms and conditions of employment.
 - c. If, during the family leave, the employer experiences a layoff and the employee would have lost a position had the employee not been on leave, pursuant to the good faith operation of a bona fide layoff and recall system, including a system under a collective bargaining agreement, the employee is not entitled to reinstatement in the former or equivalent position. In such circumstances, the employee retains all rights under the layoff and recall system, including a system under a collective bargaining agreement, as if the employee had not taken the leave.
2. If an employee on family leave requests a return to work before the end of the leave as scheduled, the employer shall place the employee in an employment position of the type described in subsection 1 within a reasonable time not exceeding the duration of the leave as scheduled.
3. No employer may, because an employee received family leave, reduce or deny an employment benefit that accrued to the employee before the employee's leave began or accrued after the employee's leave began. However, this Act does not entitle a returning employee to a right, employment benefit, or employment position to which the employee would not have been entitled had the employee not taken family leave or to the accrual of any seniority or employment benefit during a period of family leave, unless otherwise provided by a collective bargaining or other agreement between the employer and employee.

SECTION 8. Prohibited acts - Individual remedies. No person may interfere with, restrain, or deny the exercise of any right provided under this Act. In addition to any remedies otherwise provided by law, any person injured by a violation of this Act has a claim for relief to recover any damages, together with costs and disbursements, including reasonable attorneys' fees, and may receive injunctive and other equitable relief as determined by the court.

SECTION 9. Scope.

1. This Act does not prohibit an employer from providing employees with rights to family leave which are more generous to the employee than the rights provided by this Act.

2. This Act does not limit or diminish an employee's rights or benefits under chapters 52-01 through 52-07.1.

SECTION 10. Application. This Act first applies, with respect to any employee covered by a collective bargaining agreement on the effective date of this Act, on the day after that collective bargaining agreement expires or is extended or renewed.

SECTION 11. EFFECTIVE DATE. This Act becomes effective on January 1, 1990.

Approved April 12, 1989
Filed April 13, 1989

CHAPTER 681

HOUSE BILL NO. 1077
(Representatives J. DeMers, Rydell, Kelly)
(Senators Mushik, Olson, Stenehjem)

CHILDREN'S SERVICES COORDINATING COMMITTEE

AN ACT to establish the children's services coordinating committee; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Children's services coordinating committee - Membership. The children's services coordinating committee is hereby established and consists of the governor or a designee of the governor, the attorney general or a designee of the attorney general, the commissioner of the board of higher education or a designee of the commissioner, the superintendent of public instruction, the executive director of the department of human services, the state health officer, the director of job service North Dakota, the director of institutions, the director of vocational education, the chairperson of the governor's committee on children and youth, the executive director of the Indian affairs commission, and a designee of the chief justice. The governor or the governor's designee shall act as chairperson.

SECTION 2. Staff - Support services. The committee is authorized to employ such staff as provided by appropriations or grants. In addition, each executive branch agency, department, and office may provide support services required to achieve the objectives of the committee.

SECTION 3. Functions. The committee shall plan for and coordinate delivery of services to children and adolescents who are abused, neglected, emotionally disturbed, mentally ill, medically disabled, runaways, homeless, deprived, school dropouts, school-age parents, chemical or alcohol abusers, unruly, or delinquent. The committee shall foster preventive strategies and early intervention to strengthen families in their capacity to parent children. The committee may coordinate, sponsor, or oversee interagency or intergovernmental projects and programs for children, or projects and programs that require the participation of both governmental and private entities. No funds, grants, gifts, or services may be used for the purposes of direct provision of contraception services, abortion, or abortion referrals to minors.

SECTION 4. Charter public corporations. The children's services coordinating committee may charter public corporations to implement programs for the classes of children and programs described in section 3 of this Act. The committee shall prescribe conditions for the creation, continuance, and longevity of such corporations. Each such corporation must possess all powers and perform all the duties usual to corporations for public purposes or conferred upon it by law. Under its name, it may sue and be sued, enter into contracts, receive and expend moneys, employ personnel, and convey property as comes into its possession by will or otherwise. The employees of

such corporations must be deemed state employees for purposes of immunity and participation in fringe benefits. After approval by the children's services coordinating committee, the corporate charters become effective upon filing with the secretary of state or at a later date cited in the charter.

SECTION 5. Authority to accept and expend funds, grants, or gifts. The children's services coordinating committee may apply for and may accept and expend subject to legislative appropriation any funds, grants, gifts, or services made available for the purpose of planning, coordinating, or providing services to children and adolescents by any local, state, or federal agency or department, or any private agency or individual. Funds received by the children's services coordinating committee pursuant to this section must be deposited in the state treasury in a special fund designated as the children's services coordinating committee fund. The state treasurer shall invest such funds in interest-bearing accounts as are designated by the committee, and the interest earned must be deposited in the children's services coordinating committee fund.

SECTION 6. APPROPRIATION. There is hereby appropriated out of any moneys in the children's services coordinating committee fund, \$2,650,000, or so much thereof as may be necessary, to the children's services coordinating committee for the purpose of planning, coordinating, or providing services to children and adolescents for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved April 15, 1989
Filed April 17, 1989

STATE HISTORICAL SOCIETY AND STATE PARKS

CHAPTER 682

SENATE BILL NO. 2372
(Senators Maixner, Richard, Krauter)
(Representatives R. Anderson, Martin, Kouba)

TRANSFER OF HISTORICAL BOARD COLLECTION ITEMS

AN ACT to amend and reenact subsection 3 of section 55-01-02 of the North Dakota Century Code, relating to the jurisdiction of the state historical board to dispose of items within its custody.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 55-01-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Dispose of or transfer such articles in the collections as ~~the superintendent may recommend~~, it deems appropriate. However, the board may not make any disposal or transfer before hearing an assessment of any proposed disposal or transfer by the superintendent of the state historical board. Disposal or transfer is to be by any appropriate means including but not limited to sale or exchange, provided that the proceeds from sale of articles must be deposited in the state treasury in a special revolving fund. All moneys in such fund are hereby appropriated on a continuing basis for the purchase of other items for the collections. Unless other conditions are specified in a deed or gift, a reasonable attempt shall be made to return articles to the original donor prior to disposal by any other means.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 683

SENATE BILL NO. 2486
(Senators Yockim, Hanson)
(Representatives Haugen, Gerhardt, Nelson)

YELLOWSTONE-MISSOURI CONFLUENCE AREA IMPROVEMENTS

AN ACT to amend and reenact section 55-06-01 of the North Dakota Century Code, relating to the Yellowstone-Missouri-Fort Union commission; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-06-01. Yellowstone-Missouri-Fort Union commission. There shall be a Yellowstone-Missouri-Fort Union commission, hereinafter referred to as the "commission", declared to be a governmental agency with the authority to exercise the powers specified herein, or which may be reasonably implied, composed of the governor as chairman, the president of the senate, the speaker of the house, the superintendent of the state historical board, the director of the economic development commission, all ex officio, and five citizens of the state to be appointed by the governor who shall serve without compensation for the purpose of investigating, in cooperation with the state of Montana and the national park service, the historical importance and significance of the area and for formulating and executing plans for the preservation of the historic sites illustrative of the history of the United States. The commission may expend its operating expenses and other funds provided by legislative appropriations, and public and private grants, for programs, improvements, and facilities to preserve and improve the Yellowstone-Missouri confluence area.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 684

HOUSE BILL NO. 1324
(Representatives D. Olsen, Myrdal, Kolbo)
(Senators Nething, Tallackson, David)

PARKS AND RECREATION SUMMER CAMP FEES

AN ACT to amend and reenact section 55-08-05 of the North Dakota Century Code, relating to fees charged for services by the director of the North Dakota parks and recreation department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-08-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-08-05. Charges for services. The director is hereby authorized to provide special services within state parks, state campgrounds, state recreation areas, and reserves, and to make rules and regulations for the use of such services. The director shall establish and cause to be collected charges, fees, and rentals for the use of all such special services, and shall revise the same, when necessary, in such manner that the revenue derived therefrom will be sufficient to pay the cost of providing each such service and to pay the principal of and interest on all bonds issued for projects furnishing the facilities for any such services, and to maintain a reserve for the security of said bonds as herein provided. The director may, ~~however,~~ waive the collection of charges, fees, and rentals for the use of all such special services by health care-related charitable organizations conducting group camp activities without charge to participants. However, the director shall waive the collection of charges, fees, and rentals for the use of all special services by any care-related charitable organization sponsoring or conducting summer group camp activities without charge for fourteen days for children from age eight through age fourteen who have diabetes. Nothing in this section requires the director to provide camp services if the camp facilities are otherwise closed due to adverse administrative or fiscal impacts upon the department. Specifically, but without limitation of said general authorization, the director may:

1. Provide special parking space for automobiles or other motor-driven vehicles in any state park or state recreation area.
2. Provide special parking spurs and campgrounds for automobiles and sites for tent-camping and special auto trailer coach parking spaces for the use of the individual charged for such space according to the daily rate which must be determined and fixed by the director consistent with the type of facility provided for the accommodation of visitors in any particular park and with similar facilities offered for tourist camping in the area.
3. Charge a fee for entrance to any pageant grounds which may be created in any state park, state recreation area or reserve for the

purpose of having historical or other pageants conducted by the agent of any authorized agency.

4. Provide water, sewer, and electric service to trailer or tent campsites and buildings and structures included in projects authorized by the legislative assembly.
5. Provide facilities for the sale to the public of food, nonintoxicating beverages, except beer and wine sales as provided in subsection 6, and other merchandise and personal services of a suitable nature, and make buildings, structures, and other recreational facilities available for use and occupancy by the public, or contract for the lease of any such buildings, structures, and facilities to a concessionaire to be operated on such terms and compensation basis as the director ~~shall determine~~ determines to be in the best interest of the state. A bond ~~shall~~ must be required of each concessionaire in such amount as the director ~~shall determine~~ determines, conditioned upon the faithful performance of all duties under the lease and proper accounting for all funds.
6. Allow the sale of beer and wine by concessionaires on property leased to the department by the United States department of the army, corps of engineers, provided the concessionaire also obtains the appropriate local and state licenses required by section 5-02-01.
7. Charge and collect motor vehicle permit fees in such amounts as are or ~~shall~~ may be prescribed by the legislative assembly, not less than the amounts now prescribed in section 55-08-06, which fees are and ~~shall~~ must be imposed for the sole purposes of paying capital costs of projects required to provide the special services herein described and referred to, and of meeting the principal and interest and reserve requirements of bonds issued to finance such projects.

Approved March 29, 1989

Filed March 30, 1989

CHAPTER 685

HOUSE BILL NO. 1162

(Committee on Transportation)

(At the request of the North Dakota Parks and Recreation Department)

STATE PARK VEHICLE FEES

AN ACT to amend and reenact section 55-08-06 of the North Dakota Century Code, relating to fees for permits on motor vehicles entering state park and recreation areas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-08-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-08-06. Permits for motor vehicles. No motor vehicle may enter or be permitted to enter any state park, state recreational area, or reserve unless the operator of such motor vehicle shall display upon request a permit issued as provided in this chapter; provided, however, that this does not apply to any motor vehicles entering any state park for the purpose of parking thereon during the performance of any historic drama. Permits must be of a size, form, and character as the director shall prescribe, and the director shall procure permits for each calendar year which by appropriate language shall grant permission to use any state park, state recreational area, or reserve. Permits for each calendar year must be provided and placed on sale on or before November first next preceding, and used on or at any time after that date until May first of the year following the calendar year for which issued. Such permits in each category must be numbered consecutively for each year of issue. A maximum fee of fifteen dollars may be charged for each permit issued, except that permits of appropriate special design may be sold individually at a maximum of ~~two~~ three dollars per permit covering the use of state parks, state recreational areas, or reserves under such conditions as the director may prescribe for a designated period of not more than three days. The fees collected must be deposited in the state park operating fund in the state treasury.

Approved March 9, 1989

Filed March 9, 1989

CHAPTER 686

HOUSE BILL NO. 1140
(Committee on Natural Resources)
(At the request of the North Dakota
Parks and Recreation Department)

PARKS AND RECREATION DEPARTMENT GIFT FUNDS

AN ACT to create and enact a new section to chapter 55-08 of the North Dakota Century Code, relating to the establishment of a state parks gift fund; and to amend and reenact section 55-08-07 of the North Dakota Century Code, relating to the expenditure of grants and bequests to the North Dakota parks and recreation department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-08-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-08-07. State park fund - Appropriation. All revenues collected as permit fees, admissions, use charges, rentals, compensation for concession agreements, or otherwise, with the exception of revenue from bequests, trusts, or gifts, shall be placed in the state park fund, together with all proceeds of bonds issued pursuant to section 55-08-08. This fund shall be maintained by the state treasurer as a special trust fund and is hereby irrevocably appropriated and shall be used and disbursed solely for the following purposes:

1. To pay the current cost of furnishing each special service provided in accordance with this chapter. For this purpose the charges, fees, and rentals for each service shall be credited to a special operating account, from which shall be paid only the current, reasonable and necessary cost of operating such service, determined in accordance with accepted accounting practice, including the purchase price of merchandise and utilities sold and the compensation of employees necessarily attributable to the furnishing of such service. The director shall incur no operating cost for any building, structure, or facility leased, and such leases shall provide for the payment of such costs by the lessee and for the payment of a net rental in addition thereto. No such lease rentals and no motor vehicle permit fees shall be credited to operating accounts.
2. To provide for the payment and security of the principal and interest when due on any state park revenue bonds issued pursuant to section 55-08-08. For this purpose the treasurer shall credit to a special service account within the state park fund, as received, all bond proceeds, all motor vehicle permit fees and all rental payments by lessees, and all net income remaining in the operating account for each special service at the end of each month, in excess of the costs of operation thereof which are then

payable or are to become due and payable within one month, and shall transfer from this fund and account to the revenue bond fund described in section 55-08-09, whenever necessary, so much of the revenues then on hand as may be required, or all thereof, if necessary, to produce a balance in the revenue bond fund equal to the sum of the interest due and to become due within eighteen months plus the principal due and to become due within twenty-four months thereafter on all outstanding series of such bonds.

3. To finance the acquisition, construction, reconstruction, improvement, betterment, or extension of park properties, for projects within state parks, state campgrounds, state recreation areas, and reserves including, but without limitation, the acquisition of land and water, the erection of buildings and structures, and the improvement of properties held in trust for or leased by the state of North Dakota, when and as authorized from time to time by the legislative assembly of the state of North Dakota. For this purpose the director shall authorize the disbursement from time to time of bond proceeds and revenues received in the fund; provided, that no such disbursements shall be made in excess of the amounts of revenue bonds issued and other funds granted or appropriated and received for this purpose, and no such disbursements shall be made at any time when the balance in the revenue bond fund is less than specified in subsection 2.
4. For any other park purpose for which funds shall have been appropriated by the legislative assembly to the North Dakota parks and recreation department; provided, that no such disbursement shall be made at any time when the balance in the revenue bond fund is less than specified in subsection 2.

SECTION 2. A new section to chapter 55-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

State parks and recreation department gift fund - Fund use. There is established in the state treasury a special fund designated as the state parks gift fund. All donations to the state parks and recreation department in the form of gifts, trusts, and bequests of property or money, and any interest accruing thereon, must be placed in the state parks gift fund and is hereby appropriated to the department. The fund may be used and disbursed by the state parks and recreation department, with the approval of the state emergency commission, in accordance with the terms of the donation as determined by the director.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 687

HOUSE BILL NO. 1150

(Committee on Natural Resources)

(At the request of the North Dakota Parks and Recreation Department)

STATE PARKS CONCESSION FUND

AN ACT to amend and reenact section 55-08-07.1 of the North Dakota Century Code, relating to the continuance of the state parks and recreation department revolving fund for concessions operations and using a modified accrual basis for the June thirtieth concession fund balance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-08-07.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

55-08-07.1. State parks and recreation department concession revolving fund — ~~Appropriation~~. The director shall ~~establish~~ maintain a state parks concession revolving fund to be used for the following:

1. Procurement and maintenance of an inventory of food, nonintoxicating beverages, and other merchandise and supplies of a suitable nature for the operation of concession stands at the state parks, including payment of costs and travel expenses necessarily incurred to obtain or sell such items.
2. Repair, replacement, construction, and maintenance of concession buildings, facilities, and properties contained therein.

The sum of fifty thousand dollars is hereby ~~appropriated from~~ established in the state parks concession revolving fund for the purpose provided in this section as a standing and continuing appropriation limit on the fund balance after accrued liabilities on June thirtieth of each year. Any surplus in this fund in excess of fifty thousand dollars on June thirtieth of each year must be transferred to the state park operating fund.

Approved March 9, 1989

Filed March 9, 1989

TAXATION

CHAPTER 688

SENATE BILL NO. 2526

(Moore)

(Approved by the Committee on Delayed Bills)

AGRICULTURAL PROPERTY ASSESSMENT DEFINITION

AN ACT to amend and reenact subsection 1 of section 57-02-01 of the North Dakota Century Code, relating to the definition of agricultural property for assessment purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-02-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "Agricultural property" means platted or unplatted lands used for raising agricultural crops or grazing farm animals, except lands platted and assessed as agricultural property prior to March 30, 1981, shall continue to be assessed as agricultural property until put to a use other than raising agricultural crops or grazing farm animals. The time limitations contained in this section may not be construed to prevent property that was assessed as other than agricultural property from being assessed as agricultural property if the property otherwise qualifies under this subsection. Property platted on or after March 30, 1981, is not agricultural property when any three of the following conditions exist:
 - a. The land is platted by the owner.
 - b. Public improvements including sewer, water, or streets are in place.
 - c. Topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops or graze farm animals.
 - d. Property is zoned other than agricultural.
 - e. Property has assumed an urban atmosphere because of adjacent residential or commercial development on three or more sides.
 - f. The parcel is less than ten acres [4.05 hectares] and not contiguous to agricultural property.
 - g. The property sells for more than four times the county average true and full agricultural value.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 689

HOUSE BILL NO. 1238
(Representatives A. Hausauer, Goetz)
(Senator Satrom)

OPTIONAL PROPERTY TAX INCREASE AUTHORITY

AN ACT providing optional property tax levy increase authority of political subdivisions and providing limitations on that authority; and to provide an effective date and an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Protection of taxpayers and taxing districts. Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section "base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year and "budget year" means the taxing district's year for which the levy is being determined under this section.
3. A taxing district may elect to levy at most five percent more in the budget year than the amount levied in dollars in the base year. Any levy of a percentage increase under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before adding the increase, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final base year taxable valuation of any property that is not included in the assessment for the budget year but was included in the assessment for the base year.
 - b. Increased by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final budget year taxable valuation of any property that was not included in the assessment for the base year but which is included in the assessment for the budget year.
 - c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.

4. A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add the percentage increase permitted by subsection 3 to the amount levied under this subsection.
5. In addition to any other increase under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
6. Under the provisions of this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
 - a. Any irrepealable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
7. A school district choosing to increase its levy authority under this section may apply the allowable percentage increase only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply the allowable percentage increase to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to the allowable percentage increase under this section.
8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first two taxable years beginning after December 31, 1988, and is thereafter ineffective.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 690

HOUSE BILL NO. 1145
(Committee on Finance and Taxation)
(At the request of the State Board of Equalization)

RELIGIOUS PROPERTY EXEMPTION

AN ACT to amend and reenact subsection 9 of section 57-02-08 of the North Dakota Century Code, relating to the exemption from ad valorem taxation for a religious corporation or organization; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 57-02-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. All real property, not exceeding two acres [.81 hectares] in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of ~~such~~ the organization, or upon which there is a dwelling with usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector, or other minister in charge of ~~such~~ services, shall be deemed to be property used exclusively for religious services, and exempt from taxation, whether ~~such~~ the real property consists of one tract or more. The exemption for a building used for the religious services of the owner continues to be in effect if the building in whole, or in part, is rented to another otherwise tax exempt corporation or organization, provided no profit is realized from the rent. All real property owned by any religious corporation or organization and used as a parking lot by persons attending religious services is exempt from taxation. All taxes assessed or levied on any ~~such of the~~ property, while the ~~same was so~~ property is used for religious purposes, are void.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 691

SENATE BILL NO. 2417
(Senators Ingstad, Mushik)
(Representatives J. DeMers, Rydell, Scherber)

CHILDHOOD FACILITY TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-02-08 of the North Dakota Century Code, relating to a property tax exemption that may be granted by the governing body of a political subdivision for early childhood service facilities licensed by the state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-02-08 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The governing body of the city, for property within city limits, or of the county, for property outside city limits, may grant a property tax exemption for the portion of fixtures, buildings, and improvements, used primarily to provide early childhood services by a corporation or organization licensed under chapter 50-11.1. However, this exemption is not available for property used as a residence.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 692

HOUSE BILL NO. 1236
(Representatives A. Hausauer, Graba, Tollefson)
(Senators Ingstad, Mushik, Yockim)

NEW RESIDENTIAL PROPERTY TAX EXEMPTION

AN ACT to create and enact two new subsections to section 57-02-08 of the North Dakota Century Code, to allow cities and counties to provide exemptions from property taxes for new single family residential property and condominiums and townhouses which meet certain qualifications; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 57-02-08 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

Up to seventy-five thousand dollars of the true and full value of all new single family residential property, exclusive of the land on which it is situated, is exempt from taxation for the first two taxable years after the taxable year in which construction is begun if all of the following conditions are met:

- a. The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.
- b. Special assessments and taxes on the property upon which the residence is situated are not delinquent.
- c. The first owner after the builder resides on the property, or the builder still owns the property. For purposes of this subsection, "builder" includes a person who builds that person's own residence.

For purposes of this subsection "single family residential property" does not include condominium or townhouse property.

Up to seventy-five thousand dollars of the true and full value of each unit of all new condominium and townhouse residential property, exclusive of the land on which it is situated, is exempt from taxation for the first two taxable years after the taxable year in which construction is begun if all of the following conditions are met:

- a. The governing body of the city, for property within city limits, or the governing body of the county, for property outside city limits, has approved the exemption of the property by resolution. A resolution adopted under this subsection may be rescinded or amended at any time. The governing body of the city or county may limit or impose conditions upon exemptions under this subsection, including limitations on the time during which an exemption is allowed.
- b. Special assessments and taxes on the property upon which the condominium or townhouse is situated are not delinquent.
- c. The first owner, after the builder, who resides in the condominium or townhouse unit still owns the property.

SECTION 2. EFFECTIVE DATE. This Act is effective for exemptions approved by city or county governing bodies after December 31, 1988.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 693

SENATE BILL NO. 2083
(Senators Moore, Dotzenrod, Nalewaja)
(Representative A. Olson)

SENIORS PROPERTY TAX CREDIT RETENTION

AN ACT to amend and reenact subsection 1 of section 57-02-08.1 of the North Dakota Century Code, relating to retention of property tax credits for persons confined to certain care facilities and to limit benefits to living applicants; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 1 of section 57-02-08.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any person sixty-five years of age or older in the year in which the tax was levied, or any person who is permanently and totally disabled in the year in which the tax was levied, as certified by a physician selected by the local governing body, with an income of twelve thousand dollars or less per annum from all sources, including the income of any person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall receive a reduction in the assessment on the taxable valuation on his homestead as defined in section 47-18-01, except that this exemption shall apply to any person who otherwise qualifies under the provisions of this subsection regardless of whether or not such person is the head of a family. The exemption under this subsection continues to apply if the person does not reside in the homestead and the person's absence is due to confinement in a nursing home, hospital, or other care facility, for as long as the portion of the homestead previously occupied by the person is not rented to another person. The exemption to which any person may be entitled shall be determined according to the following schedule:
 - a. If the person's income is not in excess of six thousand dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand dollars of taxable valuation.
 - b. If the person's income is in excess of six thousand dollars and not in excess of seven thousand five hundred dollars, a reduction of eighty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand six hundred dollars of taxable valuation.
 - c. If the person's income is in excess of seven thousand five hundred dollars and not in excess of nine thousand dollars, a

* NOTE: Section 57-02-08.1 was also amended by section 1 of House Bill No. 1245, chapter 694, and section 8 of Senate Bill No. 2229, chapter 142.

reduction of sixty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand two hundred dollars of taxable valuation.

- d. If the person's income is in excess of nine thousand dollars and not in excess of ten thousand five hundred dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of eight hundred dollars of taxable valuation.
- e. If the person's income is in excess of ten thousand five hundred dollars and not in excess of twelve thousand dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of four hundred dollars of taxable valuation.

In no case shall a husband and wife who are living together both be entitled to the credit as provided for in this subsection upon their homestead. The provisions of this subsection shall not reduce the liability of any person for special assessments levied upon his property. Any person eligible for the exemption herein provided shall sign a statement that the person is sixty-five years of age or older or is permanently and totally disabled, that such income, including that of any dependent, as determined in this chapter does not exceed twelve thousand dollars per annum and that the value of the person's assets, excluding the value of the person's "homestead" as defined in section 47-18-01, does not exceed fifty thousand dollars. The term "dependent" shall include the spouse, if any, of the person claiming the exemption. The assessor shall attach such statement to the assessment sheet and shall show the reduction on the assessment sheet. All benefits available in this section terminate upon death of the applicant.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 28, 1989

Filed March 28, 1989

CHAPTER 694

HOUSE BILL NO. 1245
(Representatives A. Hausauer, A. Olson, Goetz)
(Senator W. Meyer)

SENIOR CITIZEN PROPERTY TAX CREDITS

AN ACT to amend and reenact section 57-02-08.1 of the North Dakota Century Code, relating to property tax credits for persons sixty-five years of age or older with limited income; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 57-02-08.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-08.1. Property tax credits for persons sixty-five years of age or older with limited income.

1. Any person sixty-five years of age or older in the year in which the tax was levied, or any person who is permanently and totally disabled in the year in which the tax was levied, as certified by a physician selected by the local governing body, with an income of ~~twelve~~ thirteen thousand dollars or less per annum from all sources, including the income of any person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, shall receive a reduction in the assessment on the taxable valuation on his homestead as defined in section 47-18-01, except that this exemption shall apply to any person who otherwise qualifies under the provisions of this subsection regardless of whether or not such person is the head of a family. The exemption to which any person may be entitled shall be determined according to the following schedule:
 - a. If the person's income is not in excess of ~~six~~ seven thousand dollars, a reduction of one hundred percent of the taxable valuation of the person's homestead up to a maximum reduction of two thousand dollars of taxable valuation.
 - b. If the person's income is in excess of ~~six~~ seven thousand dollars and not in excess of ~~seven~~ eight thousand five hundred dollars, a reduction of eighty percent of the taxable valuation of the person's homestead up to a maximum reduction of one thousand six hundred dollars of taxable valuation.
 - c. If the person's income is in excess of ~~seven~~ eight thousand five hundred dollars and not in excess of ~~nine~~ ten thousand dollars, a reduction of sixty percent of the taxable valuation

* NOTE: Section 57-02-08.1 was also amended by section 8 of Senate Bill No. 2229, chapter 142, and section 1 of Senate Bill No. 2083, chapter 693.

of the person's homestead up to a maximum reduction of one thousand two hundred dollars of taxable valuation.

- d. If the person's income is in excess of ~~nine~~ ten thousand dollars and not in excess of ~~ten~~ eleven thousand five hundred dollars, a reduction of forty percent of the taxable valuation of the person's homestead up to a maximum reduction of eight hundred dollars of taxable valuation.
- e. If the person's income is in excess of ~~ten~~ eleven thousand five hundred dollars and not in excess of ~~twelve~~ thirteen thousand dollars, a reduction of twenty percent of the taxable valuation of the person's homestead up to a maximum reduction of four hundred dollars of taxable valuation.

In no case shall a husband and wife who are living together both be entitled to the credit as provided for in this subsection upon their homestead. The provisions of this subsection shall not reduce the liability of any person for special assessments levied upon his property. Any person eligible for the exemption herein provided shall sign a statement that the person is sixty-five years of age or older or is permanently and totally disabled, that such income, including that of any dependent, as determined in this chapter does not exceed ~~twelve~~ thirteen thousand dollars per annum and that the value of the person's assets, excluding the value of the person's "homestead" as defined in section 47-18-01, does not exceed fifty thousand dollars. Any person eligible for the exemption provided in this subsection must also sign an affidavit stating that the person has not divested the property within the last three years. The term "dependent" shall include the spouse, if any, of the person claiming the exemption. The assessor shall attach such statement to the assessment sheet and shall show the reduction on the assessment sheet.

2. Any person sixty-five years of age or older, or any person who is permanently and totally disabled as certified by a physician selected by the local governing body, with an income of ~~twelve~~ thirteen thousand dollars or less per annum from all sources, including the income of any person dependent upon him, including any county, state, or federal public assistance benefits, social security, or other retirement benefits, but excluding any federal rent subsidy, and who rents living quarters shall be eligible for refund for that part of his annual rent which is deemed by this subsection to constitute the payment of property tax and which is further deemed to represent a burdensome share of his income. For the purpose of this subsection, twenty percent of the annual rent, exclusive of any federal rent subsidy and of charges for any utilities, services, furniture, furnishings, or personal property appliances furnished by the landlord as part of the rental agreement, whether or not expressly set out in the rental agreement, shall be considered as payment made for property tax. When any part of the twenty percent of the annual rent exceeds four percent of the annual income of a qualified applicant, said applicant shall receive a refund from the state general fund for that amount in excess of four percent of his annual income, but such refund shall not be in excess of two hundred ~~ten~~ thirty dollars. If the calculation for said refund is less than five

dollars, a minimum of five dollars shall be sent to the qualifying applicant. In no case shall a husband and wife who are living together both be entitled to the refund as provided for in this subsection. Each application for refund under this subsection shall be made to the tax commissioner before the first day of June of each year by the person claiming the refund. The tax commissioner shall certify to the state treasurer the amount of the refund due, if any, and the state treasurer shall issue the refund from the state general fund to the applicant. In no case shall this subsection apply to rents or fees paid by a person for any living quarters, including a nursing home licensed pursuant to section 23-16-01, if that living quarter has been declared exempt from property taxation.

3. All forms necessary to effectuate this section shall be prescribed and designed by the tax commissioner who shall annually distribute an adequate supply of same to each county director of tax equalization. The county directors of tax equalization shall make these forms available upon request.
4. In determining a person's income for eligibility under this section, the amount of medical expenses actually incurred by that person or any person dependent upon him and not compensated for by insurance or otherwise shall be deducted. For purposes of this section, the term "medical expenses" shall have the same meaning as it has for state income tax purposes.
5. No person whose homestead as defined in section 47-18-01 is a farm structure exempt from taxation under subsection 15 of section 57-02-08 shall receive any property tax credit under this section.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1989.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 695

HOUSE BILL NO. 1668

(Knell)

(Approved by the Committee on Delayed Bills)

PIPELINE TAXATION

AN ACT to amend and reenact section 57-02-26 of the North Dakota Century Code, relating to the assessment of pipeline property; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-02-26 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-02-26. Certain property taxable to lessee or equitable owner.

1. Property held under a lease for a term of years, or under a contract for the purchase thereof, belonging to the United States or to the state or a political subdivision thereof, except such lands as have been leased for pasture or grazing purposes, or to any religious, scientific, or benevolent society or institution, whether incorporated or unincorporated, or to any railroad corporation whose property is not taxed in the same manner as other property, shall be considered, for all purposes of taxation, as the property of the person so holding the same.
2. Property held under an easement or a lease for a term of years and any improvements upon that property which are used for any purpose relating to discovery, exploration, processing, or transportation of oil or gas shall be considered the property of the lease or easement holder. For the purposes of this subsection, "improvements" does not include ~~pipelines or~~ property subject to the provisions of chapter 57-06 or property subject to the in lieu of ad valorem tax provisions of chapter 57-51.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 7, 1989
Filed April 7, 1989

CHAPTER 696

HOUSE BILL NO. 1075
(Aas, Tollefson)

BANK OF NORTH DAKOTA IN LIEU OF TAX PAYMENTS

AN ACT to provide for payments to political subdivisions from the board of university and school lands in lieu of property taxes for property obtained by the state of North Dakota as a result of foreclosure of a mortgage to the Bank of North Dakota; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definition. As used in this Act, unless the context or subject matter otherwise clearly indicates, "property subject to valuation" means real property owned by the board of university and school lands or by the state treasurer as trustee for the state of North Dakota, title to which was obtained after January 1, 1980, by foreclosure or deed in lieu of foreclosure of a mortgage given to the Bank of North Dakota, including a mortgage assigned to the state treasurer under section 54-30-02.

SECTION 2. Imposition of in lieu of tax payments. The board of university and school lands shall annually make payments, subject to legislative appropriations, to any county in which property subject to valuation is located. The payments are in lieu of ad valorem taxes that would be payable to the county if the real property for which the payments are made were not owned by the state. This chapter does not affect the provisions of chapter 57-29.

SECTION 3. Assessment of property - Notice to county auditors. All property subject to valuation must be assessed for the purpose of making the payments under section 2 of this Act, in the same manner as other real property in this state is assessed for tax purposes, except that improvements made to any real property after foreclosure may not be considered in the valuation. Before June thirtieth of each year the county auditor of any county in which property subject to valuation is located shall give written notice to the board of university and school lands and the state tax commissioner of the value placed by the county board of equalization upon each parcel of property subject to valuation in the county.

SECTION 4. Appearance before state board of equalization. The state board of equalization shall equalize the values placed upon property subject to valuation. Representatives of the board of university and school lands may appear before the state board of equalization to oppose unreasonable or unjust valuations placed upon property subject to valuation as equalized by the county board of equalization, or to oppose any change in valuations as proposed by the state board of equalization, to the end that all valuations of property subject to valuation may be uniform with valuations of comparable property throughout the state.

SECTION 5. Computation of payment - Remittance to counties. Upon receipt of the decision of the state board of equalization, the board of university and school lands shall compute the payments due to the counties in which property subject to valuation is located by extending the mill levies that apply to taxable property in the taxing districts in which the property is located in the same manner as is used for other taxable property in the taxing districts. After computing the payments due to each county, the board of university and school lands shall, within the limits of legislative appropriations, remit to the counties the amounts due on or before March first of the year following the year for which the assessments were made.

SECTION 6. Allocation of revenue within counties. The revenue to which taxing districts are entitled under this chapter must be determined according to the proportion that the taxing district's mill levy on other real property bears to the total mill levies of all taxing districts on other real property in the taxing districts in which the property subject to valuation is located. The revenue remaining after apportionment to the county shall be apportioned and distributed by the county treasurer among the various taxing districts in which the property for which payments are made is located. The amount of revenue allocated to each taxing district in which property subject to valuation is located shall be divided among the various funds of the district according to the proportion that the mill levy for any fund bears to the total of all mill levies of the taxing district.

SECTION 7. Appropriation. There is hereby appropriated to the board of university and school lands, as a standing and continuing appropriation from the lease rentals of property subject to valuation under this Act, the funds necessary to make the payments required by this Act.

SECTION 8. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 697

HOUSE BILL NO. 1317
(Graba, Skjerven, Carlson)

CITY EMERGENCY LEVIES

AN ACT to amend and reenact subsection 23 of section 57-15-10 and section 57-15-48 of the North Dakota Century Code, relating to limitations on city tax levies for emergency purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 23 of section 57-15-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23. Taxes levied for emergency purposes pursuant to section 57-15-48 may be levied in an amount not exceeding one mill two and one-half mills.

SECTION 2. AMENDMENT. Section 57-15-48 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-48. Tax levy for emergency purposes. The governing body of any city by a two-thirds vote may levy a tax annually for snow removal, natural disaster, or other emergency conditions not exceeding the limitation in subsection 23 of section 57-15-10. No city shall make this levy after the amount of the unexpended funds raised by this levy plus the amount of money due the fund from outstanding taxes, equals three dollars per capita the amount produced by a levy of five mills on the taxable valuation of property within the city or five dollars per capita whichever is greater.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 698

HOUSE BILL NO. 1373
(Goetz, Tollefson, Myrdal)

FORESTRY LEVY

AN ACT to amend and reenact section 57-15-12.1 of the North Dakota Century Code, relating to tax levies or service charges by cities or park districts for forestry purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-12.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-12.1. City or park district tax levy or service charge for forestry purposes.

1. The governing body of a city or park district: ~~upon approval by a fifty-five percent vote of the electors at any citywide or districtwide election;~~ may annually levy a tax not in excess of ~~five~~ two mills on the taxable valuation of property within the city or park district, for the purpose of providing funds for the establishment, operation, and maintenance of forestry activities within the city or park district. The governing board of a city or park district, upon approval by a majority vote of the electors at any citywide or districtwide election, may also annually levy an additional tax not in excess of three mills on the taxable valuation of property within the city or park district, for the purpose of providing funds for forestry activities within the city or park district. Any such tax shall be in addition to and not restricted by any mill levy limit prescribed by law. The proceeds of any such levy may be used for forestry activities, including, but not limited to, the following: prevention or control of Dutch elm disease or other diseases which may affect trees, shrubs, and other vegetation; purchasing, planting, or removal of trees, shrubs, and other vegetation; pruning and maintenance of trees, shrubs, and other vegetation; purchasing of necessary equipment; hiring of personnel; contracting for services; public information and technical assistance; and other items related to forestry activities which may be necessary to provide for proper care, maintenance, propagation, and improvement of forestry resources within the city or park district.
2. In lieu of a mill levy as specified in subsection 1, a city or park district may propose a service charge as an alternative form of financing. Such alternative form of financing shall be approved by a ~~fifty five percent~~ majority vote of the electors at any general or special citywide or districtwide election. The proceeds of any service charge may be used for forestry activities, as specified in subsection 1.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 699

HOUSE BILL NO. 1251
(Representatives A. Olson, Myrdal, Shide)
(Senator Vosper)

CEMETERY LEVIES BY TOWNSHIPS

AN ACT to amend and reenact section 57-15-27.1 of the North Dakota Century Code, relating to mill levy authority for townships and cities for maintenance of cemeteries; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-15-27.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-15-27.1. Cemetery tax levies. Organized townships and cities are hereby authorized to levy a tax, not exceeding two mills on the dollar of the taxable valuations of the organized townships or cities, in addition to all levies now authorized by law, for the purpose and to be used exclusively for the care, maintenance, and improvement of established cemeteries, owned and maintained by such organized townships or cities. In addition to all levies now authorized by law, organized townships may levy a tax not exceeding one-fourth of one mill on the dollar of taxable valuation of property in the township for the care, maintenance, and improvement of established cemeteries maintained but not owned by the township.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 700

SENATE BILL NO. 2304
(Senator Mushik)
(Representative Oban)

SENIOR CITIZEN TAX LEVY USE

AN ACT to amend and reenact subsections 1 and 2 of section 57-15-56 of the North Dakota Century Code, relating to priorities for use of revenues from tax levies for programs and activities for senior citizens; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 57-15-56 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The board of county commissioners of any county is hereby authorized to levy a tax, or if no levy is made by the board of county commissioners, the governing body of any city in the county is authorized to levy a tax, in addition to all levies now authorized by law, for the purpose of establishing or maintaining programs and activities for senior citizens including the expansion of existing senior citizen centers which will provide recreational and other leisure-time activities, informational, health, welfare, counseling, and referral services for senior citizens, and assisting such persons in providing volunteer community or civic services. If the tax authorized by this section is levied by the board of county commissioners, any existing levy under this section by a city in the county shall become void for subsequent taxable years. The removal of the levy is not subject to the requirements of subsection 3. This tax shall not exceed the limitation in subsection 25 of section 57-15-06.7 ~~and~~ or subsection 26 of section 57-15-10. The proceeds of the tax ~~shall~~ must be kept in a separate fund and used exclusively for the public purposes provided for in this section. This levy shall be in addition to any moneys expended by the board of county commissioners pursuant to section 11-11-58 or by the governing body of any city pursuant to section 40-05-16.
2. The levy authorized by this section ~~shall~~ may not be used to defray any expenses of any organization or agency until the organization or agency is incorporated under the laws of this state as a nonprofit corporation and has contracted with the board of county commissioners or the governing body of the city in regard to the manner in which the funds will be expended and the services to be provided. Governing bodies may enter into contracts with county councils on aging or comparable representative groups in counties or cities that do not have a council on aging to determine jointly and to administer distribution of funds in accordance with the

contract and the provisions of this section. An organization or agency and its program which receives funds under the provisions of this section ~~shall~~ must be reviewed or approved annually by the board of county commissioners or the governing body of the city to determine its eligibility to receive funds under the provisions of this section.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1989.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 701

SENATE BILL NO. 2322
(Lodoen)

SCHOOL DISTRICT RESERVE FUND WITHDRAWAL

AN ACT to amend and reenact section 57-19-06 of the North Dakota Century Code, relating to school district authority to withdraw from special reserve funds; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-19-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-19-06. Special reserve fund - How and when used.

1. Whenever collections from the taxes levied for the current budget are insufficient to meet the requirements of ~~such~~ the budget for teacher salaries, heat, light, and fuel, a majority of the governing body of the school district, by resolution, may provide for the issuance of vouchers directed to the county treasurer, drawing on funds in ~~said~~ the special reserve fund of ~~such~~ the district. ~~Such~~ The voucher may be substantially in the same form as a warrant, but ~~shall~~ may not be a negotiable instrument, and ~~shall~~ must direct the county treasurer to pay over to the school district from the special reserve fund the amount of money specified in the voucher. Subject to the limitations in ~~the next~~ section 57-19-07, the county treasurer shall transfer from the special reserve fund to the school district general fund the sum so specified, and shall enter ~~such~~ the voucher in a book to be known as the special reserve fund voucher register in the order in which they are issued.
2. The governing body of the school district, by resolution, may withdraw without repayment fifty percent of the funds from the special reserve fund of the school district.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 1991, and after that date is ineffective.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 702

HOUSE BILL NO. 1483
(Representatives Aarsvold, Stofferahn)
(Senator Lodoen)

DELINQUENT PROPERTY TAXES

AN ACT to create and enact a new section to chapter 57-20 of the North Dakota Century Code, relating to the collection of delinquent taxes; and to amend and reenact sections 57-20-09 and 57-28-04 of the North Dakota Century Code, relating to the inapplicability of tax payment discounts and service of notice of the expiration of the period of redemption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

Priority for delinquent taxes. When payment is made for any real or personal property taxes or special assessments, payments must be applied first to the oldest unpaid delinquent taxes or special assessments due, if any, shown to exist upon the property for which the tax payments are made, including any penalty and interest. The discounts applicable to payment of taxes set out in section 57-20-09 do not apply to payment of taxes made on property upon which tax payments are delinquent.

SECTION 2. AMENDMENT. Section 57-20-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-20-09. Discount for early payment of tax. ~~The~~ Except as provided in section 1 of this Act, the county treasurer shall allow a five percent discount to all taxpayers who shall pay all of the real estate taxes levied on any tract or parcel of real property in any one year in full on or before February fifteenth prior to the date of delinquency. Such discount shall apply to all general real estate taxes levied for state, county, city, township, school district, fire district, park district, and any other taxing districts, but shall not apply to personal property taxes or special assessment installments. Whenever the county commissioners, by resolution, determine that an emergency exists in any county by virtue of weather or other catastrophe they may extend the discount period for an additional thirty days.

SECTION 3. AMENDMENT. Section 57-28-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-28-04. Service of notice ~~by registered mail~~ of the expiration of the period of redemption. The county auditor shall serve the notice of the expiration of the period of redemption upon the owner of the record title of the real estate sold to the county for taxes, and upon each mortgagee, lienholder, and other interested person ~~interested therein~~ as may appear from

the records of the register of deeds and the clerk of the district court of ~~said~~ the county. ~~Said~~ Except for property upon which there is a homestead, the notice shall must be served by registered or certified mail, and a registry and return receipt shall must be demanded and filed with proof of service. For property upon which there is a homestead, the notice must be served as provided in subsection 2 of section 57-27-02. The expense of ~~such~~ the service by registered or certified mail shall must be added to the amount required to redeem, and ~~shall must~~ be paid by the person making the redemption in addition to the amounts stated in the notice. The auditor shall make proof of ~~such~~ service by affidavit showing the names and addresses of all parties upon whom ~~such~~ the notice was served, with the date of mailing in each case, and ~~shall must~~ attach the registry, certification, and return receipts thereto, and ~~shall must~~ file ~~such~~ the affidavit and receipts with the original notice of the expiration of the period of redemption. The register of deeds and the clerk of the district court, upon request by the county auditor, and within ten days thereafter, shall furnish ~~him~~ the county auditor with a certified list giving the names and addresses of all persons who appear to be interested as owners, mortgagees, lienholders, or otherwise in the ~~said~~ real estate, upon whom the notice of the expiration of the period of redemption must be served.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 703

SENATE BILL NO. 2197
(Committee on Finance and Taxation)
(At the request of the Tax Department)

FINANCIAL INSTITUTION TAX PAYMENT DATES

AN ACT to amend and reenact sections 57-35-05, 57-35-08, and 57-35.1-05 of the North Dakota Century Code, relating to payment of tax by banks and trust companies and building and loan associations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-35-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-35-05. Due date. All taxes levied and assessed under the terms and provisions of this chapter shall become due on the thirty-first day of December following the report to the tax commissioner provided in section 57-35-07, and shall become delinquent on the first day of March ~~next after they become due~~ following the due date. Thereupon a penalty of five percent shall attach and be charged upon all delinquent taxes, and ~~thenceforth~~ interest shall be charged at the rate of one percent per month of the original amount of the tax until the same is paid.

SECTION 2. AMENDMENT. Section 57-35-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-35-08. Computation and certification of tax. On or before August first of each year, the tax commissioner shall compute the total tax to be assessed under the terms and provisions of this chapter, and shall certify the same to ~~the~~ each county auditor of the county in which ~~each~~ the taxpayer ~~is located~~ has a location.

SECTION 3. AMENDMENT. Section 57-35.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-35.1-05. Tax payment - Delinquency payment. The taxes levied and assessed under this chapter shall be payable on the thirty-first day of December following the report to the tax commissioner under section 57-35.1-03, and shall become delinquent if not paid on or before the first day of March ~~next~~ following the due date; ~~thereafter~~ thereupon a penalty of five percent shall attach and be charged upon all delinquent taxes, and interest shall be charged at the rate of one percent per month of the original amount of the tax until the same is paid.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 704

HOUSE BILL NO. 1539
(Representatives Frey, Mertens, Peterson)
(Senators Lips, Waldera, Mushik)

UNSTAMPED CIGARETTE SALES

AN ACT to create and enact a new section to chapter 57-36 of the North Dakota Century Code, relating to wholesale sales of unstamped cigarettes to enrolled tribal members; and to amend and reenact sections 57-36-02, 57-36-07, 57-36-08, 57-36-10, and 57-36-11 of the North Dakota Century Code, relating to the requirement that all cigarettes sold in North Dakota be stamped within the state and to allow licensed distributors to sell unstamped cigarettes to enrolled tribal members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-36-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-02. Distributors and dealers to be licensed. Each person engaged in the business of selling cigarettes, cigarette papers, snuff, cigars, or tobacco in this state, including any distributor or dealer, ~~shall~~ must secure a license from the attorney general before engaging or continuing to engage in such business or continuing to engage therein. A separate application and license ~~shall be~~ is required for each distributor at each outlet or place of business within the state, and a separate dealer's license ~~shall be~~ is required for each retail outlet when a person ~~shall own~~ owns or ~~control~~ controls more than one place of business dealing in cigarettes, cigarette papers, snuff, cigars, or tobacco. No retailer ~~shall~~ will be granted a distributor's license except a retailer who also performs, in the usual course of business, performed a distributor's or wholesaler's function, and has performed such functions for at least one year prior to filing application for said license the license application. ~~Such license shall be issued by the attorney general on applications stating, on a form prescribed by him. The application prescribed by the attorney general must include the name and address of the applicant, the address and place of business at which it is proposed to engage in such business, the type of business, and such other information as may be required for the proper administration of this chapter. Each application for a wholesale or distributor's outlet license shall must be accompanied by a fee of twenty-five dollars and a surety bond to be approved by the attorney general in the sum of not less than one thousand dollars or more than five thousand dollars. Each application for a dealer's outlet license shall must be accompanied by a fee of fifteen dollars. Stamps or insignia provided for in this chapter shall may be sold to and affixed only in North Dakota by licensed distributors only. Licensed dealers may sell or, buy, or have in their possession only cigarettes upon which such stamps or insignia have been were previously affixed. A distributor's license does not authorize the holder thereof to make retail sales at retail. Each license issued shall must be prominently displayed on the premises covered by the license.~~

SECTION 2. AMENDMENT. Section 57-36-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-07. Packaging - Presumption from possession - Stamps to be affixed. Cigarettes ~~shall~~ must be packaged and stamped as follows:

1. All cigarettes sold in this state ~~shall~~ must be ~~put up~~ in packages containing five or more cigarettes each.
2. ~~Immediately upon receipt~~ Within seventy-two hours of receipt by the licensee, each package of cigarettes, except as otherwise provided in this chapter, ~~shall~~ must have a securely affixed thereto securely a suitable stamp denoting the tax ~~thereon~~, and ~~such~~ each stamp ~~shall~~ must be properly canceled prior to sale or removal for consumption, under ~~such~~ such regulations ~~as prescribed by~~ the tax commissioner shall prescribe.
3. If the cigarettes are to be sold to an enrolled tribal member pursuant to section 6 of this Act, within seventy-two hours of receipt by the licensee, a special stamp must be affixed to each package of cigarettes indicating that it is not subject to tax.
- 3- 4. Each package of cigarettes displayed, exhibited, stored, or possessed in original cartons or containers ~~or otherwise, within or upon the premises from which sale thereof may be where consumer sales are made to consumers shall be~~ is conclusively presumed conclusively to be intended for sale to consumers and to be displayed, exhibited, stored, or possessed for such purpose, and each. Each package of cigarettes, at the time the same is displayed, exhibited, stored, or possessed upon such premises, except as hereinafter otherwise provided, shall must have a securely affixed thereto securely a suitable stamp, or stamps, denoting the tax thereon. Such stamp or stamps shall Stamps must be canceled as provided in this chapter, and the possession of any unstamped package of cigarettes, ~~within or upon any premises, shall be~~ is prima facie evidence of a violation of this chapter.

SECTION 3. AMENDMENT. Section 57-36-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-08. Stamps prepared by commissioner. The tax commissioner ~~shall~~ must prepare and have suitable stamps for use on each kind of package prescribed in this chapter, and ~~shall~~ keep an accurate record of all stamps received and delivered, and a further accurate record of all stamps coming into and leaving his hands. The tax commissioner ~~shall~~ may sell the stamps herein provided for only to persons holding a "distributor's license", issued as provided in this chapter, but wholesale. Wholesale distributors of cigarettes located outside of this state, may apply for and receive a "distributor's license", as provided in section 57-36-02, and may purchase stamps from the tax commissioner and affix the same. The stamps must be affixed on cigarettes to be sold in this state, and ~~shall cancel the same in the manner prescribed by the regulations of~~ canceled pursuant to the tax commissioner's regulations. In such case, the purchaser within this state receiving such stamped cigarettes will not be required to purchase and affix stamps thereon.

* SECTION 4. AMENDMENT. Section 57-36-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-10. Stamps may be purchased at discount. Any licensed distributor ~~located within or without this state~~ may purchase stamps for ~~taxed cigarettes~~ at a discount of five percent of the face value ~~thereof~~, and the tax commissioner may allow ~~such~~ the discount in the settlement of the account of ~~such~~ the wholesale distributor upon the payment to him of any moneys which may be or become due to the state by reason of the sale, delivery, or consignment to ~~such~~ the distributor of ~~such~~ the stamps.

A licensed distributor may purchase stamps for untaxed cigarettes at a cost not to exceed the cost of producing the stamps. No discount is allowed for the purchase of untaxed cigarette stamps.

SECTION 5. AMENDMENT. Section 57-36-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-11. Tax meter machines.

1. The tax commissioner, in lieu of selling stamps, may authorize any manufacturer or distributor ~~located within or without the state~~ to stamp cigarettes with a tax meter machine, and, under such regulations as he shall prescribe, may provide. The tax commissioner may prescribe regulations for the leasing of a tax meter machine to any such manufacturer or distributor, and for supervising and checking the operation thereof of the meter. Meters must not be used to stamp untaxed cigarettes. In such case, the The tax commissioner shall collect and receive the tax prescribed by this chapter on all cigarettes sold in or delivered to dealers in the state for sale, barter, gifts, or any other purpose, and any. Any cigarette so stamped with a tax meter machine need not have stamps affixed thereon stamps prescribed in this chapter, and the same may be possessed lawfully and sold by any wholesale or retail dealer in this state. Any manufacturer or distributor who stamps stamping cigarettes with a tax meter machine, pursuant to the provisions of this section, shall be is entitled to the discount provided for in section 57-36-10.
2. The tax commissioner may designate ~~the a~~ county auditor of any county of this state as ~~his~~ the representative for the setting of tax meter machines for any particular distributor and for the collection of the cigarette tax due upon each ~~such~~ setting. Any designated county auditor so designated shall must transmit each amount of the tax collected and report each meter machine setting to the tax commissioner on or before the next business day, provided that a business day shall not include Saturday; he shall and perform such the duties in accordance with the procedure prescribed by the tax commissioner. The duties of the county auditor pursuant to this section shall be are within the coverage of his the official bond. Any designated county auditor when designated by the tax commissioner pursuant to this section shall receive from the distributor for his services for setting a meter machine a fee of five dollars for each meter setting and all such fees received by the county auditor shall be payable to him personally for his services and shall not be credited to any county fund or to any other public fund may collect a fee of five dollars

* NOTE: Section 57-36-10 was also amended by section 1 of Senate Bill No. 2475, chapter 705.

from the distributor for each meter setting. The auditor may retain the fee for the services and need not credit the fee to any public fund.

3. In instances where it is inappropriate ~~for any reason~~ for the tax commissioner to designate ~~the~~ a county auditor of any county of ~~this state~~ as ~~his the~~ representative for the setting of tax meter machines for any particular distributor and for the collection of the cigarette tax due upon each such setting, the tax commissioner may delegate such ~~the~~ responsibility to an individual or a corporate setting agent within or without this state. Any designated individual or corporation as designated shall must transmit each amount of the tax collected and report each meter machine's setting to the tax commissioner on or before the next business day, provided that a business day shall not include Saturday; the setting agent shall and perform such the duties in accordance with the procedure prescribed by the tax commissioner. Before commencing the duties of a setting agent, the setting agent shall submit to the tax commissioner a bond in the amount to be set by the tax commissioner. The setting agent must submit a bond in an amount determined by the tax commissioner prior to beginning the agent's duties. Any setting agent when designated by the tax commissioner pursuant to this section shall must receive a meter setting fee from the distributor for his services for setting a meter machine a fee to cover the cost of that portion of a bond which ~~shall be~~ is attributable to ~~any~~ that particular distributor plus a reasonable fee for the setting of the tax meter as determined by agreement among the setting agent, the distributor, and the tax commissioner.

SECTION 6. A new section to chapter 57-36 of the North Dakota Century Code is hereby created and enacted to read as follows:

Sales of untaxed cigarettes. An enrolled tribal member conducting authorized cigarette sales activities within the exterior boundaries of the Indian reservation of the tribe of the enrolled tribal member may purchase from a licensed distributor cigarettes stamped as untaxed.

When a distributor makes an untaxed cigarette sale to an enrolled tribal member, the distributor must obtain from the tribal member, on forms prescribed by the tax commissioner, the following information:

1. Name of the tribal member.
2. Social security number of the tribal member.
3. Name of the tribe of the tribal member.
4. Tribal enrollment number of the tribal member.
5. Residential address of the tribal member.
6. Business address and business location of the retail sales of the tribal member.
7. Certification that the tribal member has been granted authority from the tribe to conduct cigarette sales activity within the external boundaries of the reservation.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 705

SENATE BILL NO. 2475
(Senators Maxson, Nalewaja)
(Representatives Rydell, Wentz)

TOBACCO TAXES

AN ACT to amend and reenact sections 57-36-10, 57-36-25, subsection 1 of section 57-36-26, subsection 1 of section 57-36-28, and section 57-36-32 of the North Dakota Century Code, relating to compensation available to distributors and the rate of excise tax on the wholesale purchase price of tobacco products; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 57-36-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-10. Stamps may be purchased at discount. Any licensed distributor located within or without this state may purchase stamps at a discount of five percent of the face value thereof, and the tax commissioner may allow ~~such~~ the discount in the settlement of the account of ~~such the~~ wholesale distributor upon the payment to ~~him~~ the tax commissioner of any moneys which may be or become due to the state by reason of the sale, delivery, or consignment to ~~such~~ the distributor of ~~such the~~ stamps. The discount is computed as a percentage of the face value of the stamp at the following rates:

1. Five percent of the face value for the first one hundred thousand dollars purchased each fiscal year.
2. Four percent of the face value for the next one hundred and twenty-five thousand dollars purchased each fiscal year.
3. Three percent of the face value for the next one hundred and seventy-five thousand dollars purchased each fiscal year.
4. Two percent of the face value for purchases over four hundred thousand dollars for each fiscal year.
5. The total discount under this section for any distributor may not exceed twenty-five thousand dollars for each fiscal year.

SECTION 2. AMENDMENT. Section 57-36-25 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-25. Cigars, snuff, and other tobacco products - Excise tax on wholesale purchase price - Penalty - Reports - Collection - Allocation of revenue.

* NOTE: Section 57-36-10 was also amended by section 4 of House Bill No. 1539, chapter 704.

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products, sold in this state an excise tax at the rate of ~~twenty~~ twenty-five percent of the wholesale purchase price at which such cigars, snuff, and other tobacco products are purchased by distributors. For the purposes of this section the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction. The proceeds of such tax, together with such forms of return and in accordance with such rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the distributor on a calendar quarterly basis on or before the tenth day of the month following the quarterly period for which paid. The tax commissioner shall, however, have authority to prescribe monthly returns upon the request of the licensee distributor and such returns accompanied with remittance shall be filed before the tenth day of the month following the month for which the returns are filed.
2. Any person failing to file any prescribed forms of return or to pay any tax within the time required or permitted by this section shall be subject to a penalty of five percent of the amount of tax due, plus one percent of such tax for each month of delay or fraction thereof excepting the portion of the month within which such return was required to be filed or such tax became due. The tax commissioner, if satisfied that the delay was excusable, may waive all or any part of such penalty. Such penalty shall be paid to the tax commissioner and disposed of in the same manner as are other receipts under this chapter.
3. All moneys received by the tax commissioner under provisions of this section shall be transmitted to the state treasurer at the end of each month and deposited in the state treasury to the credit of the general fund.
4. Repealed by S.L. 1975, ch. 106, § 673.

SECTION 3. AMENDMENT. Subsection 1 of section 57-36-26 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. There is hereby levied and assessed upon all cigars, snuff, and other tobacco products, purchased in another state and brought into this state by a dealer for the purpose of sale at retail, an excise tax at the rate of ~~twenty~~ twenty-five percent of the wholesale purchase price at the time ~~such the~~ products were brought into this state. For the purposes of this section the term "wholesale purchase price" shall mean the established price for which a manufacturer sells cigars, snuff, or other tobacco products to a distributor exclusive of any discount or other reduction; ~~provided, that.~~ However, the dealer may elect to report and remit the tax on his cost price of ~~such the~~ products rather than on the wholesale purchase price. The proceeds of ~~such the~~ tax, together with ~~such the~~ forms of return and in accordance with ~~such the~~ rules and regulations as the tax commissioner may prescribe, shall be remitted to the tax commissioner by the dealer on a calendar quarterly basis on or before the tenth day of the month following

the quarterly period for which it is paid. The tax commissioner shall have the authority to place any dealer on an annual remittance basis when in the judgment of the tax commissioner the operations of the dealer merit ~~such a~~ an annual remittance period. In addition, the tax commissioner shall have the authority to permit the consolidation of the filing of a dealer's return when the dealer has more than one location and thereby would be required to file more than one return.

SECTION 4. AMENDMENT. Subsection 1 of section 57-36-28 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. A tax is hereby imposed upon the use or storage by consumers of cigars, snuff, and other tobacco products in this state, and upon ~~such~~ those consumers, at the rate of ~~twenty~~ twenty-five percent of the cost to the consumer of ~~such~~ those products.

SECTION 5. AMENDMENT. Section 57-36-32 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-36-32. Separate and additional tax on the sale of cigarettes - Collection - Allocation of revenue - Tax avoidance prohibited. There is hereby levied and assessed and there shall be collected by the state tax commissioner and paid to the state treasurer, upon all cigarettes sold in this state, an additional tax, separate and apart from all other taxes, of ~~eight and one-half~~ ten mills on each ~~such~~ cigarette, to be collected as existing taxes on cigarettes sold are, or hereafter may be, collected, by use of appropriate stamps and under similar accounting procedures. No person, firm, or corporation shall transport or bring or cause to be shipped into the state of North Dakota any cigarettes as provided herein, other than for delivery to wholesalers in this state, without first paying ~~such~~ the tax thereon to the state tax commissioner. All of the moneys collected by the state treasurer under this section shall be credited to the state general fund.

SECTION 6. EXPIRATION DATE. Sections 2 through 5 of this Act are effective through June 30, 1991, and after that date are ineffective.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 706

SENATE BILL NO. 2236
(Committee on Judiciary)
(At the request of the Attorney General)

CONTROLLED SUBSTANCE TAXATION

AN ACT to create and enact a new chapter to title 57 of the North Dakota Century Code, relating to the imposition of a tax upon marijuana and other controlled substances; and to provide civil and criminal penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 57 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. In this chapter, unless the context otherwise requires:

1. "Commissioner" means the state tax commissioner.
2. "Dealer" means a person who in violation of law manufactures, produces, ships, transports, or imports into this state or in any manner acquires or possesses more than forty-two and one-half grams of marijuana, or seven or more grams of any other controlled substance, or ten or more dosage units of any other controlled substance which is not sold by weight.
3. "Marijuana" means any marijuana, whether real or counterfeit, as defined in section 19-03.1-01, that is held, possessed, transported, transferred, delivered, sold, or offered to be sold in violation of law.
4. "Other controlled substance" means any drug or controlled substance, other than marijuana, whether real or counterfeit, as defined in section 19-03.1-01, that is held, possessed, transported, transferred, delivered, sold, or offered to be sold in violation of law.

Administration. The commissioner shall administer this chapter. Payments required by this chapter must be made to the commissioner on the form provided by the commissioner. Dealers are not required to give their name, address, social security number, or other identifying information on the form. The commissioner shall collect all taxes under this chapter.

Rules. The commissioner may adopt rules necessary to enforce this chapter. The commissioner shall adopt a uniform system of providing, affixing, and displaying official stamps, official labels, or other official indicia for marijuana and other controlled substances on which a tax is imposed.

Tax payment required for possession. No dealer may possess any marijuana or other controlled substance upon which a tax is imposed by this chapter unless the tax has been paid on the marijuana or other controlled substance as evidenced by a stamp or other official indicia.

No immunity. Nothing in this chapter may in any manner provide immunity for a dealer from criminal prosecution pursuant to law.

Pharmaceuticals. Nothing in this chapter requires persons registered under chapter 19-03.1 or otherwise lawfully in possession of marijuana or other controlled substance to pay the tax required under this chapter.

Measurement. For purposes of this chapter, a quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the dealer's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

Tax rate. A tax is imposed on marijuana and other controlled substances as defined in this chapter at the following rates:

1. On each gram of marijuana, or portion of a gram, three dollars and fifty cents.
2. On each gram, or portion of a gram, of any controlled substance other than marijuana that is sold by weight, two hundred dollars.
3. On each fifty dosage units, or portion of fifty dosage units, of any controlled substance that is not sold by weight, two thousand dollars.

Penalties - Criminal provisions.

1. **Civil penalty.** Any dealer violating this chapter is subject to a penalty of one hundred percent of the tax in addition to the tax imposed by this chapter. The penalty will be collected as part of the tax.
2. **Interest.** In addition to any tax or penalty imposed by this chapter, a dealer shall pay interest on the unpaid tax or penalty at a rate of twelve percent per annum from the date of the violation of this chapter.
3. **Criminal penalty.** In addition to the civil penalty imposed, a dealer delivering or possessing marijuana or other controlled substances without affixing the appropriate stamps, labels, or other indicia is guilty of a class C felony.
4. **Statute of limitations.** Notwithstanding chapter 29-04, or any other provision of the criminal laws of this state, an indictment may be found and filed, or an information or complaint filed, upon any criminal offense specified in this section, in the proper court within six years after the commission of an offense under this section.

Stamp price. Official stamps, labels, or other indicia to be affixed to all marijuana or other controlled substances must be purchased from the commissioner. The purchaser shall pay one hundred percent of face value for each stamp, label, or other indicia at the time of the purchase.

Payment due.

1. Stamps affixed. When a dealer purchases, acquires, transports, or imports into this state marijuana or other controlled substances on which a tax is imposed by this chapter, and if the indicia evidencing the payment of the tax have not already been affixed, the dealer shall have them permanently affixed on the marijuana or other controlled substance immediately after receiving the substance. Each stamp or other official indicia may be used only once.
2. Payable on possession. Taxes imposed upon marijuana or other controlled substances by this chapter are due and payable immediately upon acquisition or possession in this state by a dealer.

Assessments of tax and penalties - Enforcement.

1. Assessment procedure. A dealer not possessing valid stamps or other official indicia showing that the tax has been paid is subject to immediate assessment of tax and applicable penalties. The commissioner shall assess a tax and applicable penalties based on personal knowledge or information available to the commissioner; mail the dealer at the dealer's last known address or serve in person, a written notice of the amount of tax and penalty; demand its immediate payment; and, if payment is not immediately made, collect the tax and penalty as permitted by law including section 57-01-13, except that the commissioner need not await the expiration of the time periods specified in section 57-01-13.
2. Standard of proof. The tax and penalties assessed by the commissioner are presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show their incorrectness or invalidity. Any statement filed by the commissioner with a court or any other certificate by the commissioner of the amount of tax and penalties determined or assessed is admissible in evidence and is prima facie evidence of the facts it contains.
3. Enforcement. If a dealer fails to pay any tax, penalty, or interest imposed by this chapter, the attorney general shall bring an action for the recovery of the amount of the tax, penalty, or interest which may be due, in the name of the state, in any court of competent jurisdiction.

Lien upon unpaid tax - Penalty - Interest.

1. Whenever a dealer liable to pay a tax or penalty imposed refuses or neglects to pay the tax or penalty, the amount, including any interest, penalty, or addition to the tax, together with the costs that may accrue in addition to the amount, are a lien in favor of the state of North Dakota upon all property and rights to property,

whether real or personal, belonging to the dealer. The lien attaches at the time the tax becomes due and payable and continues until the liability is satisfied.

The lien is preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, and satisfied upon compliance with the procedures prescribed in sections 57-38-49 and 57-38-50.

2. The attorney general, upon the request of the tax commissioner, shall bring suit without bond, to enforce payment of any taxes, penalties, and interest and to foreclose any lien provided for in this chapter, and, in such action, the attorney general shall have the assistance of the state's attorney of the county in which the action is brought. The foregoing remedies of the state are cumulative and no action taken by the commissioner or attorney general may be construed to be an election on the part of the state or any of its officers to pursue any remedy to the exclusion of any other remedy provided by law for the enforcement or collection of tax, penalty, or interest.

Confidential nature of information.

1. Disclosure prohibited. Notwithstanding any law to the contrary, neither the commissioner nor a public employee may reveal facts contained in a report or return required by this chapter or any information obtained from a dealer; nor can any information contained in such a report or return obtained from a dealer be used against the dealer in any criminal proceeding, unless independently obtained, except in connection with a proceeding involving taxes or penalties due under this chapter from the dealer.

This provision may not be construed to prohibit the inspection by the attorney general or other legal representatives of the state of the report, return, or other information of, or regarding, a dealer who brings an action to set aside or review the tax, penalty, or interest based thereon, or against whom an action or proceeding has been instituted to recover any tax, penalty, or interest imposed by this chapter.

2. Penalty for disclosure. Any person violating this section is guilty of a class A misdemeanor.
3. Statistics. This section does not prohibit the commissioner from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports.

Investigatory powers. For the purpose of determining the correctness of any return, determining the amount of tax that should have been paid, determining whether or not the dealer should have made a return or paid taxes, or collecting any taxes under this chapter, the commissioner may examine, or cause to be examined, any books, papers, records, or memoranda, that may be relevant to making such determinations, whether the books, papers, records, or memoranda, are the property of or in the possession of the dealer or another person. The commissioner may require the attendance of any person having knowledge or information that may be relevant, compel the production of books, papers, records, or memoranda by persons required to

attend, take testimony on matters material to the determination, and administer oaths or affirmations. Upon demand of the commissioner or any examiner or investigator, the district court shall issue a subpoena for the attendance of a witness or the production of books, papers, records, and memoranda. The commissioner may also issue subpoenas. Disobedience of subpoenas issued under this chapter is punishable by the district court of the district in which the subpoena is issued, or, if the subpoena is issued by the commissioner, by the district court of the district in which the party served with the subpoena is located, in the same manner as contempt of court.

Controlled substances not subject to assessment of tax. Marijuana or other controlled substances seized or obtained by a law enforcement agent or a person acting at the direction of such agent shall not be subject to assessment of tax under this chapter if such marijuana or other controlled substances were illegally seized or obtained and would not be admissible in evidence against the dealer in a criminal prosecution for their possession.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 707

SENATE BILL NO. 2196
(Committee on Finance and Taxation)
(At the request of the Tax Department)

INCOME TAX FEDERALIZATION

AN ACT to amend and reenact subsection 3 of section 57-38-01 of the North Dakota Century Code, relating to federalization for income tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-38-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Federal Internal Revenue Code of 1954, as amended", "United States Internal Revenue Code of 1954, as amended", and "Internal Revenue Code of 1954, as amended", mean the United States Internal Revenue Code of 1986, as amended ~~to and including December 31, 1986~~. Reference to the Internal Revenue Code of 1954, as amended, includes a reference to the United States Internal Revenue Code of 1986, as amended, and reference to the United States Internal Revenue Code of 1986, as amended, includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954, as amended.
 - a. Except that the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, are not adopted in those instances where the minimum investment by the lessor is less than one hundred percent for the purpose of computing North Dakota taxable income for individuals, estates, trusts, and corporations for taxable years beginning on or after January 1, 1983. Therefore, federal taxable income must be increased, or decreased, as the case may be, to reflect the adoption or nonadoption of the provisions of section 168(f)(8) of the Internal Revenue Code of 1954, as amended, and such adjustments must be made before computing income subject to apportionment.
 - b. Provided, that one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1982, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1985, and one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable year beginning after December 31, 1983, may be deducted from federal taxable income in each of the next two years beginning after December 31, 1987, and one-half of the amount not allowed as an accelerated cost recovery system depreciation deduction for the taxable

year beginning after December 31, 1984, may be deducted from federal taxable income in each of the next two taxable years beginning after December 31, 1989. All such adjustments must be made before computing income subject to apportionment.

- c. Provided, that the depreciation adjustments allowed in subdivision b shall be limited to those eligible assets acquired during taxable years beginning after December 31, 1982. Acquisitions made before taxable years beginning January 1, 1983, must be depreciated pursuant to the methods permissible under Internal Revenue Code provisions in effect prior to January 1, 1981.
- d. Except that for purposes of applying the Internal Revenue Code of 1954, as amended, with respect to actual distributions made after December 31, 1984, by a domestic international sales corporation, or former domestic international sales corporation, which was a domestic international sales corporation on December 31, 1984, any accumulated domestic international sales corporation income of a domestic international sales corporation, or former domestic international sales corporation, which is derived before January 1, 1985, may not be treated as previously taxed income.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 708

HOUSE BILL NO. 1164
(Committee on Finance and Taxation)
(At the request of the Tax Department)

CORPORATE ALTERNATIVE MINIMUM AND WATER'S EDGE FILINGS

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.3 and a new subsection to section 57-38-01.3 of the North Dakota Century Code, relating to net operating loss deductions and special deductions; and to amend and reenact subsection 4.2 of section 57-38-01, subsection 5 of section 57-38-30.3, subsections 1 and 5 of section 57-38.4-01, and section 57-38.4-02 of the North Dakota Century Code, relating to alternative minimum taxable income and individual and corporation income tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4.2 of section 57-38-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 4.2. "North Dakota alternative minimum taxable income" in the case of corporations means alternative minimum taxable income as computed under the Internal Revenue Code provisions in effect at the close of the corporation's taxable year, reduced by any interest received from obligations of the United States included in alternative minimum taxable income or in the computation of alternative minimum taxable income on the federal return, ~~as~~ reduced by the federal income tax deduction computed under subdivision c of subsection 1 of section 57-38-01.3, increased by the amount of any net operating loss deductions to the extent that those items were deducted in determining federal alternative minimum taxable income, increased by the amount of any special deductions to the extent that those items were deducted in determining federal alternative minimum taxable income, and either increased or decreased by the adjustments provided in subdivisions a and b of subsection 3 of section 57-38-01 and subdivision g of subsection 1 of section 57-38-01.3, with the remaining amount apportioned to North Dakota by the same fraction computed under the provisions of chapter 57-38, 57-38.1, or 57-59. The sum calculated pursuant to this subsection must be reduced by the amount of any net operating loss that is attributable to North Dakota sources. If the net operating loss that is attributable to North Dakota sources exceeds the sum calculated pursuant to this subsection, the excess may be carried back or carried forward for the same time period that an identical federal net operating loss may be carried back or carried forward. If a corporation uses an apportionment formula to determine the amount of income that is attributable to North Dakota, the corporation must use the same formula to determine the amount of net operating loss that is attributable to North Dakota. In

addition, no deduction may be taken for a carryback or carryforward when determining the amount of net operating loss that is attributable to North Dakota sources.

SECTION 2. A new subdivision to subsection 1 of section 57-38-01.3 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Increased by the amount of any special deductions and net operating loss deductions to the extent that these items were deducted in determining federal taxable income.

SECTION 3. A new subsection to section 57-38-01.3 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The sum calculated pursuant to subsection 1 of section 57-38-01.3 must be reduced by the amount of any net operating loss that is attributable to North Dakota sources. If the net operating loss that is attributable to North Dakota sources exceeds the sum calculated pursuant to subsection 1 of section 57-38-01.3, the excess may be carried back or carried forward for the same time period that an identical federal net operating loss may be carried back or carried forward. If a corporation uses an apportionment formula to determine the amount of income that is attributable to North Dakota, the corporation must use the same formula to determine the amount of net operating loss that is attributable to North Dakota. In addition, no deduction may be taken for a carryback or carryforward when determining the amount of net operating loss that is attributable to North Dakota sources.

SECTION 4. AMENDMENT. Subsection 5 of section 57-38-30.3 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. For the purposes of this section, the term "federal income tax liability" means the individual's, estate's, or trust's federal income tax liability as computed for federal income tax purposes using tax tables or ~~schedule F~~, tax rate schedules, or form 8615, plus additional taxes due on federal income tax schedules or forms 4970, 4972, ~~5544~~, ~~5405~~, section 72(m)(5) penalty tax, ~~6225~~, ~~6251~~, and 5329, 6251, and 8656, and before credit for contributions to ~~candidates for public office~~, credit for the elderly (~~schedule R&RP~~) or the disabled (schedule R), credit for child and dependent care expenses (form 2441), investment credit (form 3468), foreign tax credit (form 1116), ~~work incentive credit (form 4074)~~ general business credit (form 3800), jobs credit (form 5884), ~~residential energy credit (form 5695)~~ credit for alcohol used as fuel (form 6478), credit for increasing research activities (form 6765), low income housing credit (form 8586) and nonconventional fuel credit, and before reduction for federal income tax withheld, estimated payments, earned income credit, ~~excess Federal Insurance Contributions Act (chapter 21 of the Internal Revenue Code of 1954, as amended)~~ amount paid with form 4868, excess social security tax, and the federal Railroad Retirement Tax Act (~~chapter 22 of the Internal Revenue Code of 1954, as amended~~), taxes tax withheld, credit for federal ~~taxes tax~~ on gasoline and special fuels and oils

(form 4136), and regulated investment company credits (form 2439). The term does not include amounts due for self-employment tax or social security tax and railroad retirement tax on tips. For purposes of this subsection, additional taxes due on federal income tax form 6251 or form 8656 must be reduced, but not below zero, by the amount of any investment credit used to reduce the federal tax liability before calculation of the additional tax due on form 6251 or form 8656.

SECTION 5. AMENDMENT. Subsections 1 and 5 of section 57-38.4-01 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. "Affiliated corporation" means a parent corporation and any corporation of which more than fifty percent of the voting stock of which is owned directly or indirectly by the parent corporation or another corporate member of the water's edge combined group.
5. "Income from 80/20 corporations" means net book income after taxes of a corporation which is incorporated in the United States and eligible to be included in the federal consolidated return and which has less than twenty percent of its property and payroll as determined by factoring under chapter 57-38.1 assigned to locations ~~outside~~ inside the fifty states and the District of Columbia. For purposes of determining eligibility for inclusion in a federal consolidated return under this subsection, the eighty percent stock ownership requirements of section 1504 of the Internal Revenue Code shall be reduced to ownership of over fifty percent of the voting stock directly or indirectly owned or controlled by an includable corporation.

SECTION 6. AMENDMENT. Section 57-38.4-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38.4-02. Water's edge election. A corporation required to file a worldwide unitary combined report must ~~continue to~~ do so unless it elects to apportion its income using the water's edge method.

1. A corporation electing to file using the water's edge method must comply with the following:
 - a. The election must be made on the return as originally filed.
 - b. The corporation may not reduce taxable income for federal taxes paid or accrued as allowed by subdivision c of subsection 1 of section 57-38-01.3.
 - c. The water's edge election is binding for ~~ten~~ five consecutive taxable years after making the election.
 - d. The corporation must file with the tax commissioner a domestic disclosure spreadsheet, after which the corporation must file a domestic disclosure spreadsheet only every third year while the election remains in effect.

2. All corporations electing the water's edge method must include the income and apportionment factors of the water's edge group. Foreign dividends and income from 80/20 corporations must be included as follows:
 - a. An existing corporation must include fifty percent of foreign dividends and sixty percent of income from 80/20 corporations. However, an existing corporation that increases and maintains a threshold activity by twenty-five percent or more, but not by business reorganization or acquisition, is only required to include thirty percent of foreign dividends and thirty percent of income from 80/20 corporations.
 - b. A new corporation must include thirty percent of foreign dividends and thirty percent of income from 80/20 corporations.
 - c. For taxable years beginning after December 31, 1994, all corporations making the water's edge election may reduce the inclusion to include thirty percent of foreign dividends and thirty percent of income from 80/20 corporations.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 709

HOUSE BILL NO. 1384
(Martinson)

PATROLMEN'S BENEFIT DEDUCTIONS

AN ACT to amend and reenact subdivision j of subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to an income tax deduction for highway patrolmen's retirement benefits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subdivision j of subsection 1 of section 57-38-01.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- j. Reduced by any amount, up to a maximum of five thousand dollars, received pursuant to the United States Civil Service Retirement Act, firemen's relief associations authorized by chapters 18-05 and 18-11, ~~or~~ policemen's pension funds authorized by chapter 40-45, or the highway patrolmen's retirement system authorized by chapter 39-03.1; provided, however, that the adjustment provided in this subdivision shall be reduced by any amount received pursuant to the federal Social Security Act.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 3, 1989
Filed April 3, 1989

* NOTE: Subdivision j of subsection 1 of section 57-38-01.2 was also amended by section 17 of House Bill No. 1049, chapter 134.

CHAPTER 710

SENATE BILL NO. 2201
 (Committee on Finance and Taxation)
 (Request of the Tax Department)

INCOME TAX RATE INCREASE

AN ACT to amend and reenact section 57-38-29, subsections 2 and 6 of section 57-38-30.3, and subsection 2 of section 57-38-31 of the North Dakota Century Code, relating to individual income tax rates and filing methods; to repeal sections 57-38-01.15 and 57-38-34.2 of the North Dakota Century Code, relating to proration and itemization of deductions and filing of separate income tax returns; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-29 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-29. Rate of tax on individuals. A tax is hereby imposed upon every individual, to be levied, collected, and paid annually with respect to the taxable income of such individual as defined in this chapter, computed at the following rates:

1. On taxable income not in excess of three thousand dollars, a tax of two and sixty-seven three and twenty-four hundredths percent.
2. On taxable income in excess of three thousand dollars and not in excess of five thousand dollars, a tax of four and eighty-six hundredths percent.
3. On taxable income in excess of five thousand dollars and not in excess of eight thousand dollars, a tax of five and thirty-three six and forty-seven hundredths percent.
4. On taxable income in excess of eight thousand dollars and not in excess of fifteen thousand dollars, a tax of six and sixty-seven eight and ten hundredths percent.
5. On taxable income in excess of fifteen thousand dollars and not in excess of twenty-five thousand dollars, a tax of eight nine and seventy-one hundredths percent.
6. On taxable income in excess of twenty-five thousand dollars and not in excess of thirty-five thousand dollars, a tax of nine eleven and thirty-three hundredths percent.
7. On taxable income in excess of thirty-five thousand dollars and not in excess of fifty thousand dollars, a tax of ten and sixty-seven twelve and ninety-six hundredths percent.

710
 Sec. 1 & 2 in
 R.M. (part)
 Disapproved

8. On taxable income in excess of fifty thousand dollars, a tax of twelve fourteen and fifty-seven hundredths percent.

SECTION 2. AMENDMENT. Subsections 2 and 6 of section 57-38-30.3 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. A tax is hereby imposed for each taxable year upon income earned or received in that taxable year by every resident and nonresident individual, estate, and trust. This tax is fourteen seventeen percent of the individual's, estate's, or trust's adjusted federal income tax liability for the taxable year.
6. Where a husband and wife determine their federal income tax liability for the taxable year on a joint federal income tax return they may elect to determine their North Dakota income taxes separately. The federal income tax liability must be apportioned between them in the proportion that the adjusted gross income of each bears to their combined adjusted gross income. The adjusted gross income of each must be determined in the same way that each would have been required to determine it if they had filed separate federal income tax returns. A husband and wife filing a joint federal income tax return shall file a joint state income tax return if the return is filed under this section. If separate federal income tax returns are filed, one spouse's state income tax return may be filed under this section and the other spouse's income tax return may be filed under the other provisions of this chapter.

SECTION 3. AMENDMENT. Subsection 2 of section 57-38-31 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. A husband and wife each having separate income may include their income in a single joint return; or if they have separate income from personal or professional services or from business or property in which the other has no ownership and if they file a joint federal income tax return in which such income is reported; they may file separate returns in which the separate income of each is reported in the same way that they would have been required to report it in separate federal returns if they had filed separate federal returns.

A husband and wife who have income from property or business in which both have an ownership interest may file a single joint return in which the income of both, along with any other income they may be required to report, is included; or they may file separate returns in the same way as provided in the preceding paragraph; provided, that the income from the property or business in which both have an ownership interest shall be allocated between them according to the capital interest of each; the management and control exercised by each; and the services performed by each with respect to such property or business; pursuant to rules and regulations promulgated by the tax commissioner for the reasonable allocation thereof. The same filing status and deduction method used by a husband and wife when filing federal income tax returns must be used when filing state income tax returns. If either

spouse is a resident and the other is a nonresident, separate state income tax returns must be filed.

SECTION 4. REPEAL. Section 57-38-34.2 of the North Dakota Century Code and section 57-38-01.15 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 711

HOUSE BILL NO. 1530
(Representatives A. Hausauer, Belter, G. Berg)
(Senators Ingstad, Moore, Stromme)

CORPORATE ALTERNATIVE MINIMUM INCOME TAXES

AN ACT to amend and reenact section 57-38-30 of the North Dakota Century Code, relating to the imposition and rate of income tax on corporations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-30 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-30. Imposition and rate of tax on corporations. A tax is hereby imposed upon the taxable income or the North Dakota alternative minimum taxable income of every domestic and foreign corporation received from the sources described in sections 57-38-12, 57-38-13, and 57-38-14, which shall be levied, collected, and paid annually as in this chapter provided, and which shall be computed at the greater of the ~~following~~ two calculations under subsections 1 and 2:

1. a. For the first three thousand dollars of taxable income, at the rate of three percent.
- b. On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of four and one-half percent.
- c. On all taxable income above eight thousand dollars and not in excess of twenty thousand dollars, at the rate of six percent.
- d. On all taxable income above twenty thousand dollars, and not in excess of thirty thousand dollars, at the rate of seven and one-half percent.
- e. On all taxable income above thirty thousand dollars, and not in excess of fifty thousand dollars, at the rate of nine percent.
- f. On all taxable income above fifty thousand dollars, at the rate of ten and one-half percent.
2. ~~Five~~ Six percent of the North Dakota alternative minimum taxable income. The calculation for North Dakota alternative minimum taxable income applies only if the corporation's federal alternative minimum tax liability exceeds the corporation's regular federal tax liability.

3. To the extent the tax calculation under subsection 2 exceeds the tax calculation under subsection 1, a credit for the excess amount shall be allowed against the tax liability for any future years calculated under subsection 1. This credit carryover is not allowed to the extent that the liability computed under subsection 2 would result if the only adjustments and items of tax preference taken into account to arrive at federal alternative minimum taxable income were exclusion preferences as defined in section 53(d)(1)(B) of the Internal Revenue Code.
4. The credit allowed under subsection 3 for any taxable year may not exceed the excess, if any, of tax liability of the corporation for the taxable year as calculated under subsection 1 over the tax liability of the corporation for the taxable year as calculated under subsection 2.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 712

HOUSE BILL NO. 1634
(Schneider, W. Williams)

INCOME TAX REFUND INTEREST

AN ACT to amend and reenact section 57-38-35.2, subsection 1 of section 57-38-45, and subsection 1 of section 57-38-62 of the North Dakota Century Code, relating to interest on refunds and additional assessments of individual and corporation income tax and declarations of estimated tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-35.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-35.2. Interest payments. Interest at the adjusted rate established under 26 U.S.C. 6621(a)(2) of ten percent per annum must be allowed and paid upon overpayments of tax as follows:

1. Interest on refunds arising from excess income tax withholding or overpayment of declarations of estimated tax accrues for payment from sixty days after the due date of the return or after the date the return was filed, whichever comes later.
2. Interest on refunds arising from amended returns or claims made for credit or refund accrues for payment from sixty days after the due date of the return or after the date the return was filed or after the date the tax due was fully paid, whichever comes later.
3. Interest on refunds arising from net operating loss carrybacks or capital loss carrybacks accrues for payment from sixty days after the date an amended return claiming a credit or refund because of an operating loss carryback or capital loss carryback is filed with the tax commissioner.
4. No interest may be paid on refunds arising from amended returns or other claims filed for taxable years beginning before January 1, 1979.
5. ~~The rate of interest in effect under this section on the date when interest begins to accrue under this section applies continuously to any interest accumulating on overpayments under the return until the refund is paid in full.~~

SECTION 2. AMENDMENT. Subsection 1 of section 57-38-45 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. In addition to other increases to tax and penalty prescribed in this chapter, a taxpayer is subject to interest as follows:
 - a. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest on the tax at the current adjusted rate established under 26 U.S.C. 6621(a)(2) of twelve percent per annum from the date the tax would have been due if the extension had not been granted to the date the tax is paid.
 - b. If any amount of tax imposed by this chapter, including tax withheld by an employer, is not paid on or before the due date or extended due date for such payment, there must be added to the tax interest at the rate of one-twelfth of the current adjusted rate, established under 26 U.S.C. 6621(a)(2), of such tax for each one percent per month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid excepting the month in which the return was required to be filed or the tax became due.
 - c. If upon audit an additional tax is found to be due, there must be added to the additional tax due interest at the rate of one-twelfth of the current adjusted rate, established under 26 U.S.C. 6621(a)(2), one percent of such additional tax for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
 - d. If the mathematical verification of a taxpayer's return results in additional tax due, there must be added to the additional tax interest at the rate of one-twelfth of the current adjusted rate, established under 26 U.S.C. 6621(a)(2), one percent of such additional tax due for each month or fraction of a month during which the tax remains unpaid, computed from the due date of the return to the date paid, excepting the month in which the return was required to be filed or the tax became due.
 - e. The rate of interest in effect under this section on the due date of a return applies continuously to any interest accumulating on liability under the return until the liability is paid in full.

SECTION 3. AMENDMENT. Subsection 1 of section 57-38-62 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. All individuals, estates, and trusts that are required to file a federal declaration of subject to section 6654 of the Internal Revenue Code relating to a taxpayer's failure to pay estimated income tax shall, at the time prescribed in this chapter, make a declaration of their estimated tax for the current taxable year if their estimated tax due the state from all sources, including wages, salaries, bonuses, or other emoluments, not subject to withholding, exceeds two hundred dollars and, except for nonresidents who have not filed a return in this state for the previous year, their previous year's state income tax liability

exceeded two hundred dollars. Married taxpayers who file a joint federal estimate shall each be deemed to be subject to the federal provision. If a declaration of estimated tax is required, the taxpayer shall make, at the times prescribed in this chapter, total estimated payments in an amount which is the lesser of the following:

- a. An amount which, when added to the taxpayer's withholding, equals or exceeds ninety percent of the taxpayer's total current year tax liability. No interest or penalty provisions of this chapter shall apply if the total amount of estimated tax due pursuant to this subdivision is less than two hundred dollars. The two hundred dollar floor shall apply per return.
- b. An amount which, when added to the taxpayer's withholding, equals or exceeds one hundred percent of the taxpayer's total tax liability for the immediately preceding year.
 - (1) This provision is not available for any taxpayer who was a nonfiler or a part-year resident for the immediately preceding year.
 - (2) In order to satisfy the requirements of this subdivision, taxpayers who file separate returns for the current year but filed a North Dakota joint return for the prior year, shall each be required to pay estimated tax in an amount which, when added to the taxpayer's withholding, is equal to the tax liability which would have been incurred in the immediately preceding year if separate returns had been filed.

SECTION 4. EFFECTIVE DATES. Section 1 of this Act is effective for refunds made after June 30, 1989. Section 2 of this Act is effective for interest additions made after June 30, 1989. Section 3 of this Act is effective for tax years beginning after December 31, 1989.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 713

HOUSE BILL NO. 1030
(Committee on Finance and Taxation)
(At the request of the Office of Management and Budget)

BINGO CARD SALES TAX

AN ACT to amend and reenact subsections 7, 8, and 9 of section 57-39.2-01, subdivision c of subsection 1 of section 57-39.2-02.1, and subsections 6, 7, and 8 of section 57-40.2-01 of the North Dakota Century Code, relating to the imposition of a sales and use tax on the gross receipts from furnishing bingo cards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 7, 8, and 9 of section 57-39.2-01 of the North Dakota Century Code without the amendments made in section 2 of chapter 687 of the 1987 Session Laws are hereby amended and reenacted to read as follows:

7. "Retail sale" or "sale at retail" means the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or for resale, of tangible personal property; the sale of steam, gas, and communication service to retail consumers or users; the furnishing of bingo cards; the ordering, selecting, or aiding a customer to select any goods, wares, or merchandise from any price list or catalog, which the customer might order, or be ordered for such customer to be shipped directly to such customer; the sale or furnishing of hotel, motel, or tourist court accommodations, tickets, or admissions to any place of amusement, athletic event, or place of entertainment including the playing of any machine for amusement or entertainment in response to the use of a coin; and the sales of magazines and other periodicals. By the term "processing" is meant any tangible personal property including containers which it is intended, by means of fabrication, compounding, manufacturing, producing, or germination shall become an integral or an ingredient, or component part of other tangible personal property intended to be sold ultimately at retail. The sale of an item of tangible personal property for the purpose of incorporating it in or attaching it to real property shall be considered as a sale of tangible personal property for a purpose other than for processing; the delivery of possession within the state of North Dakota of tangible personal property by a wholesaler or distributor to an out-of-state retailer who does not hold a North Dakota retail sales tax permit or to a person who by contract incorporates such tangible personal property into, or attaches it to, real property situated in another state shall not be considered a taxable sale if such delivery of possession would not be treated as a taxable sale in that state. As used in this subsection the word "consumer" shall include any hospital, infirmary, sanatorium, nursing home, home for the aged,

or similar institution that furnishes services to any patient or occupant. The sale of an item of tangible personal property to a purchaser who rents or leases it to a person under a finance leasing agreement over the term of which the property will be substantially consumed shall be considered a retail sale if the purchaser elects to treat it as such by paying or causing the transferor to pay the sales tax thereon to the commissioner on or before the last day on which payments may be made without penalty as provided in section 57-39.2-12.

8. "Retailer" includes every person engaged in the business of leasing or renting hotel, motel, or tourist court accommodations, and every person engaged in the business of selling tangible goods, wares, or merchandise at retail, or furnishing of steam, gas, and communication services, or tickets or admissions to places of amusement, entertainment, and athletic events including the playing of any machine for amusement or entertainment in response to the use of a coin, or magazines, or other periodicals; any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03; and shall include any person as herein defined who by contract or otherwise agrees to furnish for a consideration a totally or partially finished product consisting in whole or in part of tangible personal property subject to the sales tax herein provided, and all items of tangible personal property entering into the performance of such contract as a component part of the product agreed to be furnished under said contract shall be subject to the sales tax herein provided and the sales tax thereon shall be collected by the contractor from the person for whom the contract has been performed in addition to the contract price agreed upon, and shall be remitted to the state in the manner provided in this chapter; and shall include the state or any municipality furnishing steam, gas, or communication service to members of the public in its proprietary capacity. For the purpose of this chapter, retailer shall also include every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.
9. "Sale" means any transfer of title or possession, exchange or barter, conditional or otherwise, in any manner or by any means whatever, for a consideration, and includes the furnishing or service of steam, gas, or communication, the furnishing of bingo cards, the furnishing of hotel, motel, or tourist court accommodations, the furnishing of tickets or admissions to any place of amusement, athletic event, or place of entertainment including the playing of any machine for amusement or entertainment in response to the use of a coin, and sales of magazines and other periodicals. Provided, the words "magazines and other periodicals" as used in this subsection do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.

* SECTION 2. AMENDMENT. Subdivision c of subsection 1 of section 57-39.2-02.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the furnishing of bingo cards and the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.

SECTION 3. AMENDMENT. Subsections 6 and 7 of section 57-40.2-01 of the 1987 Supplement to the North Dakota Century Code and subsection 8 of section 57-40.2-01 of the North Dakota Century Code without the amendments made in section 5 of chapter 687 of the 1987 Sessions Laws are hereby amended and reenacted to read as follows:

6. "Retailer" includes every person engaged in the business of selling tangible personal property for use within the meaning of this chapter, but, when in the opinion of the commissioner, it is necessary for the efficient administration of this chapter to regard any salesman, representative, trucker, peddler, or canvasser as the agent of the dealer, distributor, supervisor, employer, or other person under whom he operates or from whom he obtains the tangible personal property sold by him, whether he is making sales in his own behalf or in behalf of such dealer, distributor, supervisor, employer, or other person, the commissioner may regard him as such agent, and may regard the dealer, distributor, supervisor, employer, or other person as a retailer for the purposes of this chapter. A retailer includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. A retailer also includes every person who engages in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, or by means of print, radio or television media, by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system.
7. "Retailer maintaining a place of business in this state", or any like term, means any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any agent operating within this state under the authority of the retailer or its subsidiary, whether such place of business or agent is located in the state permanently or temporarily, or whether or not such retailer or subsidiary is authorized to do business within this state. It includes any organization licensed by the attorney general to conduct bingo games pursuant to section 53-06.1-03. It also includes every person who engages in regular or systematic solicitation of sales of tangible personal property in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio or television media, or by mail, telegraphy, telephone, computer data base, cable, optic, microwave, or other communication system for the purpose of effecting retail sales of tangible personal property.

* NOTE: Section 57-39.2-02.1 was also amended by section 1 of Senate Bill No. 2458, chapter 714.

8. "Tangible personal property" means:
- a. Tangible goods, including the furnishing of bingo cards, wares, and merchandise, and gas, when furnished or delivered to consumers or users within this state.
 - b. The leasing or renting of tangible personal property, the sale, storage, use, or consumption of which has not been previously subjected to a retail sales or use tax in this state.
 - c. The purchase of magazines or other periodicals. Provided, the words "magazines and other periodicals" as used in this subdivision do not include newspapers nor magazines or periodicals that are furnished free by a nonprofit corporation or organization to its members or because of payment by its members of membership fees or dues.
 - d. The severance of sand or gravel from the soil.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 714

SENATE BILL NO. 2458
(Satrom)

SALES AND USE TAX]

714
Sec. 1, 3, 5, 7, 8
R. M.
Disapproved

AN ACT to create and enact chapter 57-39.3 of the North Dakota Century Code, relating to an in lieu fee to be collected by out-of-state retailers making sales into North Dakota if federal legislation is adopted; to amend and reenact sections 57-39.2-02.1, 57-39.2-03.2, 57-39.2-08.2, 57-40.2-02.1, 57-40.2-03.2, 57-40.3-02, and 57-40.5-02 of the North Dakota Century Code, relating to sales, use, motor vehicle excise, and aircraft excise tax rates; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 57-39.2-02.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-02.1. Sales tax imposed.

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes and for sales of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes and except as otherwise expressly provided in this chapter, there is imposed a tax of ~~five~~ six percent upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within the state of North Dakota of the following to consumers or users:
 - a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes and farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes.
 - b. The furnishing or service of gas, ~~cable television or other video programming services~~, communication services, or steam other than steam used for processing agricultural products.
 - c. Tickets or admissions to places of amusement or entertainment or athletic events, including amounts charged for participation in an amusement, entertainment, or athletic activity, and including the playing of any machine for amusement or entertainment in response to the use of a coin. The tax imposed by this section applies only to eighty percent of the gross receipts collected from coin-operated amusement devices.

* NOTE: Section 57-39.2-02.1 was also amended by section 2 of House Bill No. 1030, chapter 713.

- d. Magazines and other periodicals.
 - e. The leasing or renting of a hotel or motel room or tourist court accommodations.
 - f. The leasing or renting of tangible personal property the transfer of title to which has not been subjected to a retail sales tax under this chapter or a use tax under chapter 57-40.2.
2. There is hereby imposed a tax of ~~three~~ four percent upon the gross receipts of retailers from all sales at retail of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of farm machinery and irrigation equipment used exclusively for agricultural purposes within the state of North Dakota to consumers or users.
 3. In the case of a contract for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to ~~December 9, 1986~~ May 1, 1989, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date the bid was submitted.

SECTION 2. AMENDMENT. Section 57-39.2-03.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-03.2. Sales tax on alcoholic beverages and tobacco products. Notwithstanding any other provision of law, the sales taxes imposed by this chapter apply to the gross receipts of retailers from all sales at retail of alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises, and cigarettes, cigars, and other tobacco products, provided that gross receipts from the sale thereof shall mean and include any other taxes imposed on such merchandise or its use or on the retail or other sale thereof. Notwithstanding any other provision of law, there is imposed a tax of ~~six~~ seven percent on the gross receipts of retailers from all sales at retail of alcoholic beverages, which is in lieu of and not in addition to any other tax imposed by this chapter.

SECTION 3. AMENDMENT. Section 57-39.2-08.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-08.2. Sales tax to be added to purchase price and be a debt.

1. Except as otherwise provided in subsection 2, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to the retailer until paid, and shall be recoverable at law in the same manner as other debts. In adding

such tax to the price or charge, retailers shall adopt the following bracket system for the application of the tax:

\$0.01 to \$0.15	no tax
\$0.16 through \$0.20	1¢ tax
\$0.21 through \$0.40	2¢ tax
\$0.41 through \$0.60	3¢ tax
\$0.61 through \$0.80	4¢ tax
\$0.81 through \$1.00	5¢ tax
Each additional \$1.00 - 5¢ additional tax, or	
each additional 20¢ or fraction thereof over	
\$1.00 - 1¢ additional tax.	
\$0.01 through \$0.08	no tax
\$0.09 through \$0.24	1¢ tax
\$0.25 through \$0.41	2¢ tax
\$0.42 through \$0.58	3¢ tax
\$0.59 through \$0.74	4¢ tax
\$0.75 through \$0.91	5¢ tax
\$0.92 through \$1.08	6¢ tax
Each additional \$1.00 - 6¢ additional tax, or	
each additional 15¢ or fraction thereof over	
\$1.00 - 1¢ additional tax.	

2. On retail sales of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax shall constitute a part of such price or charge, shall be a debt from the consumer or user to the retailer until paid, and shall be recoverable at law in the same manner as other debts. In adding such tax to the price or charge, retailers shall add to it ~~three~~ four percent of such price or charge.

SECTION 4. Chapter 57-39.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

57-39.3-01. In lieu fee imposed. An in lieu fee is imposed on sales with a destination within North Dakota if the sales are made by a person who by virtue of federal law is required to collect and pay the sales and use tax imposed by sections 57-39.2-02.1 and 57-40.2-02.1.

57-39.3-02. Rate of in lieu fee. The in lieu fee is imposed at a rate calculated annually by the tax commissioner. The rate is calculated by dividing the total local option sales and use tax revenues collected pursuant to sections 11-09.1-05 and 40-05.1-06 in the recent fiscal year by total state sales and use tax revenues collected pursuant to sections 57-39.2-02.1 and 57-40.2-02.1, and then multiplying the resulting quotient by the sales and use tax rate established in sections 57-39.3-02.1 and 57-40.2-02.1, and rounding the resulting product to the nearest twenty-five hundredths percent.

57-39.3-03. Election to collect actual tax. Any person required to collect and pay the in lieu fee imposed in section 57-39.3-01 may elect, on an annual basis, to collect and pay the local sales and use tax imposed in each political subdivision pursuant to sections 11-09.1-05 and 40-05.1-06.

57-39.3-04. Filing of returns and payment of tax. The person paying either the in lieu fee pursuant to section 57-39.3-01 or the local sales tax pursuant to section 57-39.3-03 must file returns and pay the tax due on the same date required by the sales and use tax imposed pursuant to sections 57-39.2-02.1 and 57-40.2-02.1, unless federal law requires a less frequent schedule. If federal law specifies a less frequent schedule, the tax commissioner shall adopt rules necessary to conform the filing and payment schedule to federal law. The returns must include such information as the tax commissioner may require consistent with federal law.

57-39.3-05. Administration. The provisions of chapter 57-39.2, pertaining to the administration of the retail sales tax, including provisions for refund, credits, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the in lieu fee imposed in this chapter.

57-39.3-06. Distribution of revenues. The tax commissioner shall deposit all moneys collected and received under this chapter with the state treasurer and shall certify to the treasurer, on a schedule consistent with federal law, the distribution of the in lieu fees collected pursuant to section 57-39.3-01 to the political subdivisions imposing a sales and use tax pursuant to sections 11-09.1-05 and 40-05.1-06. The distribution is based on the proportion that the political subdivision's sales and use tax receipts bears to the total sales and use tax receipts collected by political subdivisions pursuant to sections 11-09.1-05 and 40-05.1-06. The calculations are based on data for the most recent fiscal year. The state treasurer must make the distributions on a schedule consistent with federal law.

* SECTION 5. AMENDMENT. Section 57-40.2-02.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-02.1. Use tax imposed.

1. Except as otherwise expressly provided in subsection 2 for purchases of mobile homes used for residential or business purposes and for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of ~~five~~ six percent of the purchase price of such property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of ~~five~~ six percent of the fair market value of such property at the time it was brought into this state.
2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of ~~three~~ four percent of the purchase price thereof.

* NOTE: Section 57-40.2-02.1 was also amended by section 3 of House Bill No. 1499, chapter 716.

Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of ~~three~~ four percent of the fair market value of such mobile homes used for residential or business purposes and of such farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state.

3. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to ~~December 17, 1986~~ May 1, 1989, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

SECTION 6. AMENDMENT. Section 57-40.2-03.2 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-03.2. Use tax on alcoholic beverages and tobacco products. Notwithstanding any other provision of law, the use taxes imposed by this chapter apply to the storage, use, or consumption in this state of alcoholic beverages as defined in section 5-01-01, whether mixed or unmixed at the time of sale or thereafter, and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises, and cigarettes, cigars, and other tobacco products, provided that gross receipts from the sale thereof shall mean and include any other taxes imposed on such merchandise or its use or on the retail or other sale thereof. Notwithstanding any other provision of law, there is imposed a tax of ~~six~~ seven percent on the storage, use, or consumption in this state of alcoholic beverages, which is in lieu of and not in addition to any other tax imposed by this chapter.

SECTION 7. AMENDMENT. Section 57-40.3-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.3-02. Tax imposed. There is hereby imposed an excise tax at the rate of ~~five~~ six percent on the purchase price of any motor vehicle purchased or acquired either in or outside of the state of North Dakota for use on the streets and highways of this state and required to be registered under the laws of this state.

SECTION 8. AMENDMENT. Section 57-40.5-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.5-02. Tax imposed. There is imposed an excise tax at the rate of ~~five~~ six percent on the purchase price of any aircraft purchased or acquired either in or outside of the state of North Dakota or on the lease or rental cost of any aircraft, less fuel, if rented dry and required to be registered under the laws of this state, except on aircraft or helicopters designed or modified for exclusive use as agricultural aircraft for aerial application of agricultural chemicals, insecticides, fungicides, growth

regulators, pesticides, dusts, fertilizer, or other agricultural materials, the excise tax is imposed at the rate of ~~three~~ four percent on the purchase price of any such aircraft purchased or acquired in or outside of this state, including the leasing or renting of such agricultural aircraft to users for agricultural purposes.

SECTION 9. EFFECTIVE DATE. This Act is effective for taxable events occurring after April 30, 1989, unless this Act is not passed as an emergency measure by the legislative assembly, in which case this Act is effective for taxable events occurring after June 30, 1989. Section 4 of this Act is effective on the same date the federal law authorizing the collection of the in lieu fee imposed in section 57-39.3-01 or the local sales and use tax elected pursuant to section 57-39.3-03 of this chapter becomes effective.

SECTION 10. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 715

HOUSE BILL NO. 1674
(Representative Kloubec)
(Senator Heigaard)

(Approved by the Committee on Delayed Bills)

SALES TAX TEMPORARY INCREASE SUSPENDED

AN ACT to suspend sections 4, 6, 7, and 8 of chapter 687 of the 1987 Session Laws, relating to separate and additional sales, use, motor vehicle excise, and aircraft excise taxes; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. SUSPENSION. Sections 4, 6, 7, and 8 of chapter 687 of the 1987 Session Laws are hereby suspended.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on May 1, 1989, and is effective during the time Senate Bill No. 2458, as approved by the Fifty-first Legislative Assembly, is effective, through June 30, 1989.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 716

HOUSE BILL NO. 1499
(Representatives Huether, Gerntholz, Graba)
(Senator Stromme)

MANUFACTURING EQUIPMENT SALES TAX REDUCTION

AN ACT to create and enact a new section to chapter 57-39.2 and a new section to chapter 57-40.2 of the North Dakota Century Code, relating to a reduced sales and use tax rate for manufacturing equipment purchased by a new or expanding business; and to amend and reenact section 57-40.2-02.1 of the North Dakota Century Code, relating to a reduced use tax rate for manufacturing equipment purchased by a new business.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reduced rate for manufacturing machinery and equipment.

1. Sales of machinery or equipment used directly in manufacturing of tangible personal property for wholesale, retail, or lease is subject to the tax at the rate of three percent of the purchase price. To qualify for the reduction, the machinery or equipment must be used in a new manufacturing plant or in expansion of an existing manufacturing plant. Expansion of a manufacturing plant occurs when the purchase of machinery or equipment results in either a physical expansion or economic expansion of the plant. An economic expansion is accomplished by increasing production volume, employment, or the number of different types of products which can be manufactured. Machinery or equipment purchased to replace existing machinery or equipment does not qualify for the tax reduction, unless the purchase price of the replacement machinery or equipment results in either a physical expansion or an economic expansion of the plant.
2. To receive the reduced rate at the time of purchase, the manufacturer must receive, from the commissioner, a certificate that the machinery or equipment the manufacturer intends to purchase qualifies for the reduced rate. If a certificate is not received prior to the purchase, the manufacturer shall pay the six percent sales tax rate and apply to the commissioner for a refund.
3. In the event the machinery or equipment is purchased or installed by a contractor subject to tax imposed by this chapter, the manufacturer shall apply for a refund of the difference between the amount remitted by the contractor and the reduced rate imposed by this section.
4. For purposes of this section the following definitions apply:

- a. "Equipment" means any tangible personal property other than machinery used directly in the manufacturing process.
- b. "Machinery" means mechanical devices purchased or constructed by the manufacturer or its agent and used directly in the manufacturing process. Machinery includes electrical, mechanical, and electronic components which are part of machinery and necessary for a machine to produce its effect or result.
- c. The terms "machinery" and "equipment" do not include handtools, buildings, transportation equipment not directly used in manufacturing, office machines and equipment, machines and equipment used in administrative accounting sales or other businesses, or any other equipment or machinery not used directly and solely in manufacturing.
- d. "Manufacturing", in addition to the meaning ordinarily ascribed to it, means the processing of agricultural products, including registered and certified seed, but does not include mining, refining, extracting oil and gas, or the generation of electricity.
- e. "Used directly" means used solely in the actual production during processing, fabrication or assembly of raw materials, or partially finished materials into the form in which the product is finalized, packaged, and ready for market. It also means:
 - (1) To effect a direct and immediate physical change upon the tangible personal property.
 - (2) To guide or measure a direct and immediate physical change upon the property where the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.
 - (3) To test or measure the property on the production line or at a site in the immediate location of production.
 - (4) To transport, convey, or handle the tangible personal property during the manufacturing.
 - (5) To package the product for sale and shipment.

SECTION 2. A new section to chapter 57-40.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reduced rate for manufacturing machinery and equipment.

1. Sales of machinery or equipment used directly in manufacturing of tangible personal property for wholesale, retail, or lease is subject to the tax at the rate of three percent of the purchase price. To qualify for the reduction, the machinery or equipment must be used in a new manufacturing plant or in expansion of an existing manufacturing plant. Expansion of a manufacturing plant occurs when the purchase of machinery or equipment results in either a physical expansion or economic expansion of the plant. An

economic expansion is accomplished by increasing production volume, employment, or the number of different types of products which can be manufactured. Machinery or equipment purchased to replace existing machinery or equipment does not qualify for the tax reduction, unless the purchase price of the replacement machinery or equipment results in either a physical expansion or an economic expansion of the plant.

2. To receive the reduced rate at the time of purchase, the manufacturer must receive, from the commissioner, a certificate that the machinery or equipment the manufacturer intends to purchase qualifies for the reduced rate. If a certificate is not received prior to the purchase, the manufacturer must pay the six percent sales tax rate and apply to the commissioner for a refund.
3. In the event the machinery or equipment is purchased or installed by a contractor subject to tax imposed by this chapter, the manufacturer must apply for a refund of the difference between the amount remitted by the contractor and the reduced rate imposed by this section.
4. For purposes of this section the following definitions apply:
 - a. "Equipment" means any tangible personal property other than machinery used directly in the manufacturing process.
 - b. "Machinery" means mechanical devices purchased or constructed by the manufacturer or its agent and used directly in the manufacturing process. Machinery includes electrical, mechanical, and electronic components which are part of machinery and necessary for a machine to produce its effect or result.
 - c. The terms "machinery" and "equipment" do not include handtools, buildings, transportation equipment not directly used in manufacturing, office machines and equipment, machines and equipment used in administrative accounting sales or other businesses, or any other equipment or machinery not used directly and solely in manufacturing.
 - d. "Used directly" means used solely in the actual production during processing, fabrication or assembly of raw materials, or partially finished materials into the form in which the product is finalized, packaged, and ready for market. It also means:
 - (1) To effect a direct and immediate physical change upon the tangible personal property.
 - (2) To guide or measure a direct and immediate physical change upon the property where the function is an integral and essential part of tuning, verifying, or aligning the component parts of the tangible personal property.
 - (3) To test or measure the property on the production line or at a site in the immediate location of production.

(4) To transport, convey, or handle the tangible personal property during the manufacturing.

(5) To package the product for sale and shipment.

* SECTION 3. AMENDMENT. Section 57-40.2-02.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-02.1. Use tax imposed.

1. Except as otherwise expressly provided in subsection 2 for purchases of mobile homes used for residential or business purposes and for purchases of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, and section 2 of this Act relating to the reduced rate for manufacturing equipment purchased by a new business, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property purchased at retail for storage, use, or consumption in this state, at the rate of five percent of the purchase price of ~~such~~ the property. Except as limited by section 57-40.2-11, an excise tax is imposed on the storage, use, or consumption in this state of tangible personal property not originally purchased for storage, use, or consumption in this state at the rate of five percent of the fair market value of ~~such the~~ property at the time it was brought into this state.
2. An excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes, except as provided in subsection 19 of section 57-40.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes purchased at retail for storage, use, or consumption in this state at the rate of three percent of the purchase price thereof. Except as limited by section 57-40.2-11, and except as provided in subsection 35 of section 57-39.2-04, an excise tax is imposed on the storage, use, or consumption in this state of mobile homes used for residential or business purposes and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes not originally purchased for storage, use, or consumption in this state at the rate of three percent of the fair market value of ~~such~~ mobile homes used for residential or business purposes and of ~~such~~ farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes at the time it was brought into this state.
3. In the case of a contract awarded for the construction of highways, roads, streets, bridges, and buildings prior to December 1, 1986, the contractor receiving the award shall be liable only for the sales or use tax at the rate of tax in effect on the date of contract.

Approved April 28, 1989
Filed April 28, 1989

* NOTE: Section 57-40.2-02.1 was also amended by section 5 of Senate Bill No. 2458, chapter 714.

CHAPTER 717

HOUSE BILL NO. 1267
(Gerl, Ulmer)

CANADA-MONTANA RESIDENT SALES TAX EXEMPTIONS

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to a refund of sales tax for purchases made by residents of Canada; and to amend and reenact subsection 12 of section 57-39.2-04 of the North Dakota Century Code, relating to a sales tax exemption for purchases made by residents of certain adjoining states.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 57-39.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12. Gross receipts from ~~all sales~~ a sale otherwise taxable under this chapter ~~when made to persons~~ a person who are residents is a resident of an adjoining states state which ~~do does~~ not impose or levy a retail sales tax ~~or are residents of Canada; provided that such persons are~~ under the following conditions:
 - a. The nonresident is in the state of North Dakota for the express purpose of making such purchases a purchase, and not as tourists; and provided, further, that any such person furnish a tourist.
 - b. The nonresident furnishes to the North Dakota retailer a certificate signed by him the nonresident in such a form as the commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale. Unless such the certificate is furnished it shall be presumed, until the contrary is shown, that such person the nonresident was not in the state of North Dakota for the express purpose of making such purchases; provided, further, that this exemption shall not apply to any a purchase.
 - c. The sale to any person who is a resident of another state if the sales price is twenty-five dollars or less or to any person who is a resident of Canada if the sales price is twenty-five dollars or less is fifty dollars or more.

SECTION 2. A new section to chapter 57-39.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Refunds for Canadian residents. The tax imposed under this chapter on gross receipts from sales made to a person who is a resident of Canada may be refunded under the following conditions:

1. The Canadian resident was in North Dakota for the express purpose of making a purchase, and not as a tourist.
2. The goods will be removed from North Dakota within thirty days of purchase and will be used permanently outside North Dakota.
3. The Canadian resident applies in writing to the commissioner on a form as the commissioner may prescribe reciting sufficient facts establishing the exempt status of the sale.
4. The qualifying sale is one in which the total gross receipts from each individual transaction, which may involve one or more items, equals twenty-five dollars or more.
5. The refund is fifteen dollars or more. Qualifying sales may be accumulated for periods not in excess of one calendar year in order to reach the fifteen dollar limit.
6. Notwithstanding the provisions of section 57-39.2-23, the commissioner may provide names and addresses of Canadian residents claiming a North Dakota sales tax refund to the director of tourism.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 718

HOUSE BILL NO. 1283
(Gerl, J. DeMers)

SALES TAX FOR CERTAIN BEVERAGES

AN ACT to amend and reenact subsection 33 of section 57-39.2-04, section 57-39.2-04.1, subsection 18 of section 57-40.2-04, and section 57-40.2-04.1 of the North Dakota Century Code, relating to removal of sales and use tax exemption for purchases of coffee, tea, cocoa, and certain bottled water.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 33 of section 57-39.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

33. Gross receipts from all sales of water, except water sold in containers of less than one gallon [3.79 liters] volume.

* SECTION 2. AMENDMENT. Section 57-39.2-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-04.1. Sales tax exemption for food and food products. Beginning July 1, 1973, gross receipts from sales for human consumption of food and food products including, but not limited to, cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, and sugar and sugar products, ~~coffee and coffee substitutes, tea, and cocoa and cocoa products~~ when purchased by consumers for consumption off the premises where purchased, shall be exempt from the sales tax imposed by this chapter. ~~"Food" and "food products" as used herein shall not include any alcoholic beverages or mixed drinks made therefrom; candy; chewing gum; carbonated beverages; beverages commonly referred to as soft drinks containing less than seventy percent fruit juice; powdered drink mixes; or medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts. Beginning on October 1, 1987, food or food products purchased for human consumption~~ Purchases made with food coupons issued by the United States department of agriculture under the Food Stamp Act of 1977, as amended, are exempt from the tax imposed by this chapter pursuant to the Food Security Act of 1985. For purposes of this section, "food" and "food products" does not include:

1. Alcoholic beverages or mixed drinks made from alcoholic beverages.
2. Candy or chewing gum.

* NOTE: Section 57-39.2-04.1 was also amended by section 1 of House Bill No. 1573, chapter 720.

3. Carbonated beverages.
4. Beverages commonly referred to as soft drinks containing less than seventy percent fruit juice.
5. Powdered drink mixes.
6. Medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form sold as dietary supplements or adjuncts.
7. Coffee and coffee substitutes.
8. Tea.
9. Cocoa or cocoa products.

SECTION 3. AMENDMENT. Subsection 18 of section 57-40.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

18. Gross receipts from all sales of water, except water sold in containers of less than one gallon [3.79 liters] volume.

* SECTION 4. AMENDMENT. Section 57-40.2-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-04.1. Use tax exemption for food and food products. Beginning July 1, 1973, gross receipts from sales for human consumption of food and food products including, but not limited to, cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, and sugar and sugar products, ~~coffee and coffee substitutes, tea, and cocoa and cocoa products~~ when purchased by consumers for consumption off the premises where purchased, shall be exempt from the use tax imposed by chapter 57-40.2. "Food" and "food products" as used herein shall not include any alcoholic beverages or mixed drinks made therefrom, candy, chewing gum, carbonated beverages, ~~beverages commonly referred to as soft drinks containing less than seventy percent fruit juice, powdered drink mixes, or medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts.~~ Beginning on October 1, 1987, food or food products purchased for human consumption Purchases made with food coupons issued by the United States department of agriculture under the Food Stamp Act of 1977, as amended, are exempt from the tax imposed by this chapter pursuant to the Food Security Act of 1985. For purposes of this section, "food" and "food products" does not include:

1. Alcoholic beverages or mixed drinks made from alcoholic beverages.
2. Candy or chewing gum.
3. Carbonated beverages.

* NOTE: Section 57-40.2-04.1 was also amended by section 2 of House Bill No. 1573, chapter 720.

4. Beverages commonly referred to as soft drinks containing less than seventy percent fruit juice.
5. Powdered drink mixes.
6. Medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form sold as dietary supplements or adjuncts.
7. Coffee and coffee substitutes.
8. Tea.
9. Cocoa or cocoa products.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 719

HOUSE BILL NO. 1613
(Representatives Goetz, Hoffner)
(Senators Satrom, Moore)

COAL BENEFICIATION TAXES

AN ACT to create and enact a new subsection to section 57-39.2-04, a new subsection to section 57-40.2-04, two new subsections to section 57-60-01, and a new subsection to section 57-60-02 of the North Dakota Century Code, relating to the exemption of beneficiated coal from the sales tax and use tax, the definition of coal beneficiation, and the imposition of a tax upon the operator of a coal beneficiation plant; and to amend and reenact subsections 1 and 2 of section 57-60-01 and section 57-60-03 of the North Dakota Century Code, relating to the inclusion of coal beneficiation plants in the definition of a coal conversion facility and the measurement and recording of beneficiated coal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-39.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from the initial sale of beneficiated coal taxed under chapter 57-60.

SECTION 2. A new subsection to section 57-40.2-04 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Gross receipts from the initial sale of beneficiated coal.

SECTION 3. AMENDMENT. Subsections 1 and 2 of section 57-60-01 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. "Byproducts" means commercially usable products produced during the coal gasification or coal beneficiation process other than the principal product of a coal gasification plant or of a coal beneficiation plant.
2. "Coal conversion facility" means ~~either~~ any of the following:
 - a. A plant, other than an electrical generating plant or a coal beneficiation plant, together with all additions thereto, which processes or converts coal from its natural form into a form substantially different in chemical or physical properties, including but not limited to coal gasification, coal liquefaction, and the manufacture of fertilizer and other

products, and which uses or is designed to use over five hundred thousand tons [453592.37 metric tons] of coal per year;
or

- b. An electrical generating plant, together with all additions thereto, which processes or converts coal from its natural form into electrical power and which has at least one single electrical energy generation unit with a capacity of one hundred twenty thousand kilowatts or more; or
- c. A plant, together with all additions thereto, which is designed for coal beneficiation.

SECTION 4. Two new subsections to section 57-60-01 of the 1987 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

"Coal beneficiation" means improving the physical, environmental, or combustion qualities of coal, but does not include crushing or treatment with dust suppressants or freeze-proofing agents.

"Design capacity of a coal beneficiation plant" means the number of tons a coal beneficiation plant is designed to produce as certified by a registered professional engineer.

SECTION 5. A new subsection to section 57-60-02 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

For coal beneficiation plants the tax shall be twenty cents on each ton of two thousand pounds [907.18 kilograms] of beneficiated coal produced for the purpose of sale, or one and one-quarter percent of the gross receipts derived from such facility for the preceding month, whichever amount is greater. Any amount of beneficiated coal produced in excess of eighty percent of the design capacity of the coal beneficiation plant is exempt from such tax.

SECTION 6. AMENDMENT. Section 57-60-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-60-03. Measurement and recording of synthetic natural gas, byproducts, beneficiated coal, or electricity produced. The production of synthetic natural gas, byproducts, beneficiated coal, or electrical power shall be measured at the place of production or generation, and any person subject to the imposition of the taxes provided by this chapter shall maintain devices to measure and record the cumulative periodic totals of synthetic natural gas, byproducts, beneficiated coal, and electrical power generated. Any person subject to the taxes imposed by this chapter shall maintain accurate records of the daily and monthly totals of synthetic natural gas, beneficiated coal, and electrical power generated and subject to such taxes. On or before October first of each year the operator of any coal gasification plant shall file a report with the state health officer listing the quantity of byproducts produced during the year ending June thirtieth of that year. The commissioner shall have access to such records at reasonable times and places.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 720

HOUSE BILL NO. 1573
(R. Larson)

FOOD STORE SAMPLES EXEMPTION

AN ACT to amend and reenact sections 57-39.2-04.1 and 57-40.2-04.1 of the North Dakota Century Code, relating to sales and use tax exemptions for food samples given to customers in food stores.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 57-39.2-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-39.2-04.1. Sales tax exemption for food and food products. ~~Beginning July 1, 1973, gross~~ Gross receipts from sales for human consumption of food and food products including, but not limited to, cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products when purchased by consumers for consumption off the premises where purchased, shall be exempt from the sales tax imposed by this chapter. Gross receipts from sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are exempt from the sales tax imposed by this chapter. "Food" and "food products" as used herein shall not include any alcoholic beverages or mixed drinks made therefrom, candy, chewing gum, carbonated beverages, beverages commonly referred to as soft drinks containing less than seventy percent fruit juice, powdered drink mixes, or medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts. ~~Beginning on October 1, 1987, food~~ Food or food products purchased for human consumption with food coupons issued by the United States department of agriculture under the Food Stamp Act of 1977, as amended, are exempt from the tax imposed by this chapter pursuant to the Food Security Act of 1985.

** SECTION 2. AMENDMENT. Section 57-40.2-04.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.2-04.1. Use tax exemption for food and food products. ~~Beginning July 1, 1973, gross~~ Gross receipts from sales for human consumption of food and food products including, but not limited to, cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products when purchased by consumers

* NOTE: Section 57-39.2-04.1 was also amended by section 2 of House Bill No. 1283, chapter 718.

** NOTE: Section 57-40.2-04.1 was also amended by section 4 of House Bill No. 1283, chapter 718.

for consumption off the premises where purchased, shall be exempt from the use tax imposed by chapter 57-40.2. Gross receipts from sales for human consumption of food and food products given, or to be given, as samples to consumers for consumption on the premises of a food store are exempt from the use tax imposed by this chapter. "Food" and "food products" as used herein shall not include any alcoholic beverages or mixed drinks made therefrom, candy, chewing gum, carbonated beverages, beverages commonly referred to as soft drinks containing less than seventy percent fruit juice, powdered drink mixes, or medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, and pill form sold as dietary supplements or adjuncts. **Beginning on October 1, 1987, food** Food or food products purchased for human consumption with food coupons issued by the United States department of agriculture under the Food Stamp Act of 1977, as amended, are exempt from the tax imposed by this chapter pursuant to the Food Security Act of 1985.

Approved March 22, 1989

Filed March 23, 1989

CHAPTER 721

HOUSE BILL NO. 1534
(W. Williams)

DELINQUENT SALES TAX RETURN PENALTIES

AN ACT to amend and reenact subsection 1 of section 57-39.2-18 and subsection 1 of section 57-40.2-15 of the North Dakota Century Code, relating to penalties for delinquent sales and use tax returns and payments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-39.2-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. If any person fails to file a return or corrected return or to pay any tax within the time required by this chapter or, if upon audit, is found to owe additional tax, ~~such the person shall be~~ is subject to a penalty of five percent of the amount of tax due or of five dollars, whichever is greater, plus interest of one percent of ~~such the tax for each per month of delay or fraction thereof, excepting of a month of delay except the first month after such the return was required to be filed or such or the tax became due.~~ Any person on a monthly filing schedule with seven to fourteen delinquent original returns or payments, and any person other than a monthly filer with four to eight delinquent original returns or payments, is subject to a penalty of ten percent of the tax due or twenty-five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or the tax became due. Any person on a monthly filing schedule with fifteen or more delinquent original returns or payments, and any person other than a monthly filer with nine or more delinquent original returns or payments, is subject to a penalty of fifteen percent of the tax due or one hundred dollars, whichever is greater, plus interest of one percent of the tax due per month or fraction of a month of delay except the first month after the return or the tax became due. The commissioner, if satisfied that the delay was excusable, may waive, and if paid, refund all or any part of ~~such the~~ penalty and interest. ~~Such~~ The penalty and interest ~~shall must~~ be paid to the commissioner and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as the tax imposed by this chapter.

SECTION 2. AMENDMENT. Subsection 1 of section 57-40.2-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any person failing to file a return or corrected return or to pay any tax imposed pursuant to this chapter, within the time required by this chapter, ~~shall be~~ is subject to a penalty of five percent

of the amount of tax due or of five dollars, whichever is greater, plus interest of one percent of ~~such the~~ tax for each month of ~~delay~~ or fraction thereof, ~~excepting~~ of a month except the first month after ~~such the~~ return ~~was required to be filed~~ or ~~such the~~ tax became due. Any person on a monthly filing schedule with seven to fourteen delinquent original returns or payments, and any person other than a monthly filer with four to eight delinquent original returns or payments, is subject to a penalty of ten percent of the tax due or twenty-five dollars, whichever is greater, plus interest of one percent of the tax per month or fraction of a month of delay except the first month after the return or tax became due. Any person on a monthly filing schedule with fifteen or more delinquent returns or payments, and any person other than a monthly filer with nine or more delinquent original returns or payments, is subject to a penalty of fifteen percent of the tax due or one hundred dollars, whichever is greater, plus interest of one percent of the tax due per month or fraction of a month of delay except the first month after the return or tax became due. The commissioner, if satisfied that the delay was excusable, may waive, and if paid, refund all or any part of ~~such the~~ penalty and interest. ~~Such~~ The penalty and interest ~~shall~~ must be paid to the commissioner and disposed of in the same manner as the tax with respect to which it is attached. Unpaid penalties and interest may be enforced in the same manner as is the tax.

Approved March 22, 1989

Filed March 23, 1989

CHAPTER 722

SENATE BILL NO. 2168
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

SPECIALTY MOTOR VEHICLE EXCISE TAX EXEMPTION

AN ACT to create and enact a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to an exemption from motor vehicle excise tax for specialty motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-40.3-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any motor vehicle with a gross vehicle weight of at least a class six, seven, or eight chassis, purchased for installation or assembly of heavy duty equipment by a person engaged in the business of installing or assembling the equipment, which when completed forms an integral part of a vehicle, has limited marketability, and is not normally sold to the general public. This exemption applies only when the manufacturer's statement of origin is reassigned to the installer or assembler by a licensed new motor vehicle dealer on a form prescribed by the tax commissioner. The motor vehicle and installed equipment must be sold as a unit when completed. "Heavy duty equipment" includes fuel delivery tanks, refuse bodies, cranes, aerial bucket devices, bus bodies regardless of gross vehicle weight, and digger derricks.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 723

SENATE BILL NO. 2029
 (Committee on Finance and Taxation)
 of the Office of Management and Budget)

RATE AND VEHICLE EXCISE TAX ALLOCATION

AN ACT to amend and reenact section 57-40.3-10, subsection 1 of section 57-43.1-02, and subsection 1 of section 57-43.2-02 of the North Dakota Century Code, relating to motor vehicle excise tax allocation and motor fuel taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.3-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.3-10. Allocation of revenue. All moneys collected and received under this chapter shall be transmitted monthly by the registrar to the state tax commissioner and ~~by him~~ shall be paid to the state treasurer to be transferred and credited ~~as follows~~:

- ~~1. Fifty percent of the tax accruing under this chapter on motor vehicles purchased or acquired outside of this state for use in this state, shall be credited to the motor vehicle registration fund.~~
- ~~2. The remaining fifty percent of the tax accruing under this chapter on motor vehicles purchased or acquired outside of the state for use in this state shall be credited to the general fund.~~
- ~~3. All moneys accruing under this chapter on motor vehicles purchased in this state shall be credited to the general fund.~~

SECTION 2. AMENDMENT. Subsection 1 of section 57-43.1-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Except as otherwise provided in this section, a tax of ~~seventeen~~ seventeen nineteen cents per gallon [3.79 liters] is imposed on all motor vehicle fuel sold or used in this state.

* SECTION 3. AMENDMENT. Subsection 1 of section 57-43.2-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An excise tax of ~~seventeen~~ seventeen nineteen cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any special fuel user, except that special fuel to be used for heating, agricultural, or railroad purposes or for industrial purposes other than in the performance of a contract with any unit of government

* NOTE: Subsection 1 of section 57-43.2-02 was also amended by section 10 of Senate Bill No. 2251, chapter 727.

is exempt from the tax imposed by this chapter, provided that the sale or delivery of special fuel for use in a motor vehicle is not exempt. From July 1, 1983, through June 30, 1985, the tax imposed by this subsection on fuel consisting of a blend of diesel fuel and not less than ten percent recovered oil shall be four cents per gallon [3.79 liters] less than the nonagriculturally derived special fuel excise tax provided in this subsection. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.

Approved April 14, 1989
Filed April 17, 1989

CHAPTER 724

HOUSE BILL NO. 1549
(Representatives Stenehjem, D. Larson)
(Senators Stenehjem, Thane)

MOTOR VEHICLE RETURN EXCISE TAX REFUND

AN ACT to amend and reenact section 57-40.4-01.1 of the North Dakota Century Code, relating to refunds of motor vehicle excise taxes with respect to returned motor vehicles; and to provide for application of the Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.4-01.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.4-01.1. Refund of tax on returned vehicles. ~~Any~~ The owner of a passenger motor vehicle; ~~if such motor vehicle is~~ returned to the manufacturer under ~~the provisions of~~ chapter 51-07 or the owner of a motor vehicle, as defined under section 57-40.3-01, when the purchase is canceled by the dealer, may claim a refund of motor vehicle excise tax on the amount paid to the owner by the manufacturer or dealer.

SECTION 2. APPLICATION. This Act applies to purchases of motor vehicles canceled after June 30, 1988.

Approved March 22, 1989
Filed March 23, 1989

CHAPTER 725

SENATE BILL NO. 2141
(Committee on Transportation)
(At the request of the Motor Vehicle Department)

MOTOR VEHICLE TAX REFUNDS AND MOBILE HOMES

AN ACT to amend and reenact sections 57-40.4-02 and 57-55-01.2 of the North Dakota Century Code, relating to motor vehicle excise tax refunds and statements of full consideration for mobile homes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-40.4-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-40.4-02. Procedure for refunding. Any person entitled to a refund of motor vehicle excise tax, may make application for ~~such~~ the refund to the ~~tax commissioner registrar~~ registrar in the manner prescribed by the ~~commissioner registrar~~ registrar. Upon the presentation of proof satisfactory to the ~~commissioner registrar~~ registrar, ~~he the registrar~~ shall authorize the refund to be made from moneys appropriated for that purpose. No refund ~~shall~~ ~~may~~ be authorized by the ~~commissioner registrar~~ registrar until ~~he the registrar~~ is fully satisfied through the production of necessary purchase agreements, tax receipts, and other documents and information that the refund is warranted. Payment of the refund ~~shall~~ must be made by warrant prepared by the office of management and budget, after approval of the voucher by the office of the budget registrar.

SECTION 2. AMENDMENT. Section 57-55-01.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-55-01.2. Statements of full consideration to be filed with application for title to mobile homes - Sales ratio study - Penalty. Any person who has purchased a mobile home and is applying for a title and license of a mobile home under section 39-18-03 shall present, with the application, his a certified statement of the full consideration paid for the mobile home. The registrar of motor vehicles shall not issue a certificate of title to the mobile home until the certified statement is received. The registrar of motor vehicles shall accumulate and at least monthly forward to the state board of equalization a report containing the information filed in his office pursuant to this section. The state board of equalization shall prescribe the necessary forms for the statements and reports to be used in carrying out the purposes of this section, and the forms must contain a space for the explanation of special circumstances which may have contributed to the amount of the consideration. The state board of equalization shall furnish this information to the state tax commissioner who shall conduct a sales ratio study to determine the proper assessment values of mobile homes under this chapter. Any person who, in the statement provided for in this section, willfully falsifies the consideration paid for the transferred mobile home is guilty of a class B misdemeanor.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 726

SENATE BILL NO. 2088
(Committee on State and Federal Government)
(At the request of the Director of Institutions)

EMERGENCY 911 TELEPHONE LOCATION SYSTEM

AN ACT to amend and reenact subsection 2 of section 1 of chapter 720 of the 1987 Session Laws of North Dakota, relating to the emergency service communications system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 1 of chapter 720 of the 1987 Session Laws of North Dakota is hereby amended and reenacted to read as follows:

2. The advisory committee with the assistance of the state radio communications office shall establish standards and guidelines for the development and operation of emergency 911 telephone systems that utilize a county rural numbering system to identify the sections, townships, and quarters, and the farms, residences, businesses, or buildings in a counterclockwise rotation around each quarter workable local governmental location system. The standards and guidelines are to establish the level of emergency 911 telephone system services to be provided and the uniformity and compatibility of emergency 911 telephone systems in the state. The standards must require that systems installed after July 1, 1987, must identify the emergency caller's location.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 727

SENATE BILL NO. 2251
(Committee on Finance and Taxation)
(At the request of the Tax Department)

FUELS TAXES REVISIONS

AN ACT to create and enact two new sections to chapter 57-43.1 and a new section to chapter 57-43.2 of the North Dakota Century Code, relating to determination of motor vehicle fuel tax if no return is made and a credit for motor fuel and special fuel taxes paid on worthless accounts; and to amend and reenact subsection 3 of section 57-43.1-01, sections 57-43.1-04, 57-43.1-06, 57-43.1-09, 57-43.1-10, 57-43.1-16, subsections 4 and 5 of section 57-43.2-01, subsection 1 of section 57-43.2-02, sections 57-43.2-11 and 57-43.2-15 of the North Dakota Century Code, relating to definition of "importer for use" as applied to motor vehicle fuel taxes, refund claims for motor vehicle fuel, refunds for tax paid on motor fuel when taken out of North Dakota, refunds for fuel used for heating purposes, invoices issued to purchasers of motor vehicle fuel, the witness requirements for motor fuel dealers' reports, definitions of "highway purposes" and "importer for use" as applied to special fuel taxes, the imposition of special fuel tax on fuel blended with recovered oil, and penalties for failure to pay special fuels tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 57-43.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Importer for use" means any person importing motor fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property and; having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use. Any person engaged in the business of agriculture is excluded from this definition while transporting that person's produce or livestock in a motor vehicle owned by that person.

* SECTION 2. AMENDMENT. Section 57-43.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-04. Form of claim for refund. A refund claim must be on a form furnished by the commissioner and must have a written declaration by the

- * NOTE: Section 57-43.1-04 was also amended by section 1 of House Bill No. 1214, chapter 728.

claimant that it is made under the penalties of perjury. It must have attached the original invoice or invoices showing the purchase of the motor vehicle fuel on which a refund is claimed. The refund claim must state the name of the person from whom the motor vehicle fuel was purchased, the date of purchase, the total amount of such motor vehicle fuel, that the purchase price has been paid and that in the price was included the motor vehicle fuel tax payable to the state of North Dakota under this chapter, that the motor vehicle fuel was used or is to be used by the claimant other than in motor vehicles operated or intended to be operated upon the public highways of this state, the manner in which the motor vehicle fuel was used or is to be used, the equipment in which the motor vehicle fuel was used, or in which it will be used, and such other information as the commissioner requires. The original invoice or invoices indicating the purchase of motor vehicle fuel on which the refund is claimed must be attached to the refund claim. If the original invoice or invoices are lost, the claimant may substitute duplicate invoices plus a separate affidavit on forms prescribed by the commissioner. A certified history of purchases detailing required information may be accepted by the commissioner in lieu of original sales invoices or sales tickets.

* SECTION 3. AMENDMENT. Section 57-43.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-06. Refund to prevent double taxation - Reduction for agriculturally derived fuel tax fund. Any person to whom special fuel or motor vehicle fuel is sold on which the tax imposed by this chapter or chapter 57-43.2 has been paid who thereafter removes the fuel from this state to a state which requires payment of a tax upon the use of the fuel in that state shall be granted a refund of the tax that was paid pursuant to this chapter or chapter 57-43.2. ~~The refund of tax paid pursuant to this chapter shall be reduced by the amount provided in section 57-43.1-03, and the reduction shall be deposited in the agriculturally derived fuel tax fund.~~ The refund shall be granted only upon application to the commissioner on forms prescribed by the commissioner, including proof of payment of the tax imposed by the other state, and is subject to the limitations provided in section 57-43.1-05. The tax provided for in section 57-43.2-03 shall not be levied on sales of any such fuel for which a refund of tax is made pursuant to this section.

SECTION 4. AMENDMENT. Section 57-43.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-09. Refunds to private individuals or corporations prohibited - Exception. No tax refund shall be paid to any person on any motor vehicle fuel used, except liquefied petroleum gas fuel used for heating purposes, if the work performed by a person is paid for from public funds of the United States, state, or any political subdivision.

SECTION 5. AMENDMENT. Section 57-43.1-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-10. Invoice issued to purchaser. Every seller of motor vehicle fuel shall issue to each purchaser, who purchases motor vehicle fuel for agricultural or industrial purposes, a duplicate original invoice for each sale, ~~using double-faced carbon,~~ which must be in the form prescribed by the commissioner and must show the date, name, residence and license number, if any, of the seller, and the number of gallons [liters] of motor vehicle

* NOTE: Section 57-43.1-06 was also amended by section 8 of House Bill No. 1200, chapter 81.

fuel sold. Each invoice so issued must be signed by the purchaser and the seller shall retain one of such duplicate invoices as part of the seller's business records for not less than two years.

SECTION 6. AMENDMENT. Section 57-43.1-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-16. Report by dealer to commissioner. Each dealer in motor vehicle fuel who engages in the sale or use of motor vehicle fuel in this state shall render to the commissioner, not later than the twenty-fifth day of each calendar month, on the form prescribed, prepared, and furnished by the commissioner a statement ~~witnessed by two witnesses~~ of the number of gallons [liters] of motor vehicle fuel sold, used, received, and delivered by that dealer during the preceding calendar month. If the commissioner deems it necessary to ensure the payment of the tax imposed by this chapter, the commissioner may require returns and payment of the tax to be made for periods other than monthly periods. If the dealer is a domestic corporation, the statement must be signed by the president or secretary, and if a foreign corporation, by the resident general agent, attorney in fact, or by a chief accountant or officer. If the dealer is a firm, or an association of individuals, the statement must be made by the managing agent or owner. The report must contain a statement of the quantities of motor vehicle fuel sold, used, received, and delivered within this state from the dealer's place of business. If any motor vehicle fuel has been sold and delivered by the dealer to customers in the original package, whether in tank car, barrel, or other package, and in the form and condition in which the same was imported, the statement must show the amount of motor vehicle fuel so sold and delivered, and the names and addresses of the persons to whom it was sold and delivered.

SECTION 7. A new section to chapter 57-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Determination if no return made. If any motor vehicle fuel dealer, whether or not licensed as such, fails, neglects, or refuses to file a motor vehicle fuel tax return when due, the commissioner shall, on the basis of available information, determine the tax liability of the motor vehicle fuel dealer for the period during which no return was filed, and to the tax thus determined the commissioner shall add the penalty and interest as provided in section 57-43.1-21. An assessment made by the commissioner under this section or section 57-43.1-21 is presumed to be correct, and in any case where the validity of the assessment is in question, the burden is on the person who challenges the assessment to establish by fair preponderance of evidence that it is erroneous or excessive.

SECTION 8. A new section to chapter 57-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Credit for taxes paid on worthless accounts. Taxes paid on motor vehicle fuel represented by accounts found to be worthless and actually charged off for income tax purposes, may be taken as a credit against subsequent taxes due. If the worthless account is subsequently collected, the tax must be remitted on the amount collected.

SECTION 9. AMENDMENT. Subsections 4 and 5 of section 57-43.2-01 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

4. "Highway purposes" means any use of special fuels in any motor vehicle or in any phase of construction, reconstruction, repair, or maintenance of farm-to-market roads as defined in subsection 2 and of highways as defined in subsection 2 3, ~~except that special fuel known as liquefied petroleum gas used for heating purposes; and but~~ does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
5. "Importer for use" means any person importing fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds gross vehicle weight. In the case of motor vehicles that are leased or rented, the importer for use means the lessee or renter unless the commissioner has designated the lessor, renter, or some other person as the importer for use. Any person engaged in the business of agriculture is excluded from this definition while transporting that person's produce or livestock in a motor vehicle owned by that person.

* SECTION 10. AMENDMENT. Subsection 1 of section 57-43.2-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. An excise tax of seventeen cents per gallon [3.79 liters] is imposed on the sale or delivery of special fuel to any special fuel user, except that special fuel to be used for heating, agricultural, or railroad purposes or for industrial purposes other than in the performance of a contract with any unit of government is exempt from the tax imposed by this chapter, provided that the sale or delivery of special fuel for use in a motor vehicle is not exempt. ~~From July 1, 1983, through June 30, 1985, the tax imposed by this subsection on fuel consisting of a blend of diesel fuel and not less than ten percent recovered oil shall be four cents per gallon {3.79 liters} less than the nonagriculturally derived special fuel excise tax provided in this subsection.~~ For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.

SECTION 11. AMENDMENT. Section 57-43.2-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-11. Records and returns - Penalties and interest - Powers of commissioner.

1. A special fuel dealer shall keep such records and make such monthly returns and payments of the tax to the commissioner, in the manner, at the time, and pursuant to similar procedures as are provided in sections 57-43.2-10 and 57-43.2-12. The commissioner may require

* NOTE: Subsection 1 of section 57-43.2-02 was also amended by section 3 of Senate Bill No. 2029, chapter 723.

returns and payments of the tax to be made for other than monthly periods.

2. For failure or refusal to keep such records, file returns and make payments of the tax to the commissioner as provided in this chapter, a special fuel dealer is subject to the penalties and interest as provided in this chapter.
3. The commissioner, for good cause shown, may waive the penalty for failure to pay the tax due or for failure or refusal to file a return within the time required by this chapter or grant a reasonable extension of time for filing such a return. The commissioner may revoke the license of any special fuel dealer under the conditions and after notice as provided in section 57-43.2-09; assess deficiencies in the tax; determine the tax when returns are not filed as required by this chapter; and permit credit for or authorize refund of erroneously or illegally collected taxes, penalties, or interest imposed by this chapter from undistributed funds received under this chapter, all in the manner and to the same extent as provided in sections 57-43.2-15, 57-43.2-16, 57-43.2-17, and 57-43.2-20.
4. The commissioner shall enforce the provisions of this chapter and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement of this chapter, and may examine the records of special fuel wholesalers or dealers and special fuel users and make such investigations as are deemed necessary in the administration and enforcement of this chapter.
5. The commissioner shall audit the returns and make necessary assessments pursuant to the procedures and limitations provided for in section 57-43.2-14.

SECTION 12. AMENDMENT. Section 57-43.2-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-15. Refusal or failure to file return or pay tax when due - Deficiencies - Penalties. If any special fuel dealer refuses or fails to file a return required by this chapter or fails to pay the tax due within the time prescribed by section 57-43.2-12, there is imposed a penalty of five dollars or a sum equal to five percent of the tax due, whichever is greater, together with interest at the rate of one percent per month on the tax due, for each calendar month or fraction of a month during which such refusal or failure continues, excepting the month within which the tax became due. The commissioner, for good cause shown, may waive the penalty or the interest provided by this section. If a special fuel dealer files a return but fails to pay in whole or in part the tax due under this chapter, there shall be added to the amount due and unpaid, interest at the rate of one percent per month or fraction of a month from the date the tax was due to the date of payment in full. If it is determined by the commissioner that the tax reported by any special fuel dealer is deficient, the commissioner shall proceed to assess the deficiency on the basis of available information and add to this deficiency interest at the rate of one percent per month or fraction of a month from the date the return was due.

SECTION 13. A new section to chapter 57-43.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Credit for taxes paid on worthless accounts. Taxes paid on special fuels represented by accounts found to be worthless and actually charged off for income tax purposes may be taken as a credit against subsequent taxes due. If the worthless account is subsequently collected, the tax must be remitted on the amount collected.

CHAPTER 728

HOUSE BILL NO. 1214
(Whalen)

FUELS TAX REFUND CLAIMS

AN ACT to amend and reenact section 57-43.1-04 of the North Dakota Century Code, relating to forms used for refunds of taxes paid on motor vehicle fuels.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 57-43.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-04. Form of claim for refund. A refund claim must be on a form furnished by the commissioner and must have a written declaration by the claimant that it is made under the penalties of perjury. It must have attached the original invoice or invoices showing the purchase of the motor vehicle fuel on which a refund is claimed, must state the name of the person from whom the motor vehicle fuel was purchased, the date of purchase, the total amount of such motor vehicle fuel, that the purchase price has been paid and that in the price was included the motor vehicle fuel tax payable to the state of North Dakota under this chapter, that the motor vehicle fuel was used or is to be used by the claimant other than in motor vehicles operated or intended to be operated upon the public highways of this state, the manner in which the motor vehicle fuel was used or is to be used, the equipment in which the motor vehicle fuel was used, or in which it will be used, and such other information as the commissioner requires. If the original invoice or invoices are lost, the claimant may substitute duplicate invoices plus a separate affidavit on forms prescribed by the commissioner. A certified history of purchases detailing required information may be accepted by the commissioner in lieu of original sales invoices or sales tickets.

Approved March 14, 1989
Filed March 15, 1989

* NOTE: Section 57-43.1-04 was also amended by section 2 of Senate Bill No. 2251, chapter 727.

CHAPTER 729

HOUSE BILL NO. 1538
(J. DeMers)

IMPORTER FOR USE SPECIAL FUELS EXCISE TAX

AN ACT to amend and reenact sections 57-43.2-03 and 57-43.2-04 of the North Dakota Century Code, relating to a special fuels excise tax levy and to the collection and payment of the tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-43.2-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-03. Tax levied. A special excise tax of two percent is imposed on all sales of special ~~fuel~~ fuels, which are exempted from the tax imposed under section 57-43.2-02 ~~to a special fuel user and on all sales of special fuels which are taxed under this chapter if that tax is later refunded to a special fuel user~~, if the special fuels are sold to a special fuels user in this state, and the same rate of tax is imposed if the special fuel is imported for use in this state by a special fuels user. The rate applies to the sale price of the special fuels less any discounts for any purposes allowed and taken on the sales. The tax levied under this section does not apply to state or political subdivisions when that fuel is used for purposes set forth in section 57-43.1-08. The special excise tax applies to all sales of special fuels taxed under section 57-43.2-02 for which taxes are later refunded to a special fuels user. For purposes of this section, "use" means the consumption of fuel for heating, agricultural, or railroad purposes, or for industrial purposes other than in the performance of a contract with any unit of government. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due. The provisions for credit in this section apply only if the other state or its political subdivisions allow a credit with respect to the tax imposed by this section which is substantially similar in effect to the credit provided in this section.

SECTION 2. AMENDMENT. Section 57-43.2-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-04. Collection and payment of tax. The tax imposed by section 57-43.2-03 attaches at the time of sale of any special fuel by a special fuel dealer to a special fuel user. The tax imposed by section 57-43.2-03 on special fuels imported for use in this state attaches when the fuel is used in this state. The special fuel dealer shall collect the tax from the special fuel user and pay the tax to the commissioner as provided in this

chapter unless the tax is collected as provided in section 57-43.2-02 if the tax imposed by that section was paid to the commissioner and refunded to the special fuel user. If the tax imposed by section 57-43.2-02 was paid by a special fuels user and the special fuel was used for an exempt purpose, the tax must be refunded by the tax commissioner and the tax imposed by section 57-43.2-03 must be deducted from the refund. The tax imposed by section 57-43.2-03 on special fuels imported for use in the state by a special fuels user will be collected directly by the tax commissioner.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 730

HOUSE BILL NO. 1495
(R. Anderson, Whalen, Stofferahn)

SPECIAL FUEL DEALER TAX DEDUCTION

AN ACT to create and enact a new section to chapter 57-43.2 of the North Dakota Century Code, relating to a deduction for the cost of collecting and remitting special fuels taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-43.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Deduction of cost of collecting and remitting. On making payments to the commissioner as provided in this chapter the dealer shall deduct one percent from the amount of tax due, up to a maximum of three hundred dollars per month, to cover the cost of collecting the tax and remitting it to the commissioner.

Approved April 10, 1989
Filed April 11, 1989

CHAPTER 731

SENATE BILL NO. 2536

(Maixner)

(Approved by the Committee on Delayed Bills)

OIL AND GAS PRODUCTION TAX INTERPRETATION

AN ACT to create and enact a new section to chapter 57-51 of the North Dakota Century Code, relating to the taxation of the federal land bank.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-51 of the North Dakota Century Code is hereby created and enacted to read as follows:

Type of tax. For purposes of interpreting chapter 785 of the 1987 Session Laws, relating to federal land bank taxation and to the taxation of other governmental entities if their immunity from taxation has been waived, the gross production tax is a real property tax on oil and gas producing mineral estates and interests.

Approved April 28, 1989

Filed April 28, 1989

CHAPTER 732

SENATE BILL NO. 2217
(Committee on Finance and Taxation)
(At the request of the Tax Department)

OIL AND GAS TAX ADMINISTRATION

AN ACT to amend and reenact subsection 1 of section 57-51-05, subsection 3 of section 57-51-06, and sections 57-51-17 and 57-51-19 of the North Dakota Century Code, relating to interest to be paid on oil and gas production tax if an extension of time for payment has been granted, reports filed to facilitate the administration of the oil and gas production tax, and refunds of the oil and gas production tax; and to repeal sections 57-51-20 and 57-51.1-04 of the North Dakota Century Code, relating to statement sheets for oil or gas and the authority of the commissioner to accept production reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-51-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The gross production tax on oil or gas, as herein provided, shall be paid on a monthly basis. The tax on oil shall be due and payable on the twenty-fifth day of the month succeeding the month of production. The tax on gas shall be due and payable on the fifteenth day of the second month succeeding the month of production. If the tax is not paid as required by this section, it shall become delinquent and shall be collected as provided in this chapter. The penalty does not apply if ninety percent of the tax due has been paid with the monthly return and the taxpayer files an amended monthly return and pays the total tax due within sixty days from the original due date. The commissioner, upon request and a proper showing of the necessity therefor, may grant an extension of time, not to exceed fifteen days, for paying the tax and when such a request is granted the tax shall not be delinquent until the extended period has expired. Any taxpayer who requests and is granted an extension of time for filing a return shall pay, with the tax, interest at the rate of twelve percent per annum from the date the tax was due to the date the tax is paid.

SECTION 2. AMENDMENT. Subsection 3 of section 57-51-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. Reports from either the purchaser or producer, as the case may be, shall be delinquent after the last day fixed for their filing ~~the same~~, and every person required to file ~~such a~~ report shall be subject to a penalty of twenty-five dollars per day for each property upon which ~~such the~~ person shall fail or refuse to file ~~such the~~ reports. The penalties herein prescribed shall be for failure to file reports and shall be in addition to the penalty

imposed by section 57-51-10 and shall likewise constitute a lien against the assets of ~~such~~ the person failing or refusing to file ~~such the~~ reports. The penalties prescribed under this section shall be collected in the same manner as gross production taxes and shall be apportioned as other gross production tax penalties; provided, that the commissioner may, for good cause shown, ~~remit~~ waive any penalties imposed under this section. When royalty is claimed to be exempt from taxation by law, the facts on which ~~such the~~ claims of exemption are based and ~~such other relevant~~ information ~~pertaining thereto as~~ must be furnished when requested ~~by the commissioner may require shall be furnished in the report.~~

SECTION 3. AMENDMENT. Section 57-51-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51-17. Reports by carriers of oil and gas transported - Reports of refiners - Reports by persons purchasing or storing oil. It shall be the duty of every railroad company, pipeline or transportation company to furnish to the commissioner, upon forms prescribed by the commissioner request, any and all information relative to the transportation of oil or gas subject to gross production tax, that may be required to properly enforce the provisions of this chapter; and ~~such report shall contain, along with other information required, the name of shipper, amount of oil and gas transported, point of receipt of shipment and point of destination;~~ said ~~the~~ commissioner may require any ~~such~~ pipeline or transportation company to install suitable measuring devices to enable ~~such the~~ company to ~~include in such reports~~ provide information concerning the quantity of oil or gas transported within, into, out of, or across the state of North Dakota. It ~~shall be~~ is the duty of every person engaged in the operation of a refinery for the processing of oil or gas, in the state of North Dakota, to furnish ~~monthly~~ to the commissioner, upon forms prescribed by the commissioner request, any and all information, relative to ~~the amount of oil or gas subject to gross production tax that has been processed by it during such monthly period; and oil on hand at the close of such period;~~ that may be required to properly enforce the provisions of this chapter. It shall be the duty of every person engaged in the purchase or storing of oil or gas subject to gross production tax in the state of North Dakota to furnish ~~monthly a report~~ to the commissioner, upon forms prescribed by the commissioner request, showing the amount of ~~such oil or gas~~ in storage, and giving, along with ~~other~~ information required, the location, identity, character and capacity of the storage receptacle in which ~~such the oil or gas is stored. All such reports~~ Information requested under this section shall be filed for each month and shall be delinquent if not filed on or before the twenty-fifth day of the next succeeding month after production for oil and the fifteenth day of the second succeeding month after production for gas as provided in subsection 4 of section 57-51-05 provided within forty-five days of the request.

The failure of any person to comply with the provisions of this section shall make ~~any such~~ that person liable to a penalty of twenty-five dollars for each day ~~it that person~~ shall fail or refuse to furnish ~~such statement~~ the information or comply with the provisions of this chapter; ~~such any~~ penalty may be recovered at the suit of the state, on relation of the commissioner; and ~~such the~~ penalty so collected shall be apportioned to the state general fund; provided, that the ~~tax~~ commissioner may, for good cause shown, excuse any or all penalties imposed under this section.

SECTION 4. AMENDMENT. Section 57-51-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-51-19. Refund of overpayments, duplicate payments, and erroneous payments. In all cases of overpayment, duplicate payment, or payment made in error, the commissioner may issue ~~his~~ a certificate stating therein the facts and the amount of the refund to which the taxpayer may be entitled. Upon presentation of ~~such~~ the certificate to the state auditor, the state auditor shall issue a warrant for the purpose of refunding any ~~such overpaid overpayment, duplicate payment, or erroneous tax payment made in error~~ out of the unapportioned gross production tax in the state treasury and a pro rata share thereof shall be charged against the county entitled to share in ~~such~~ the tax.

SECTION 5. REPEAL. Sections 57-51-20 and 57-51.1-04 of the North Dakota Century Code are hereby repealed.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 733

HOUSE BILL NO. 1302
(Representatives Wald, Solberg, Haugen)
(Senators Maixner, Waldera, Yockim)

OIL AND GAS IMPACT GRANT FUND

AN ACT to create and enact a new section to chapter 57-62 of the North Dakota Century Code, relating to an oil and gas impact grant fund to be used to offset negative impact from oil and gas development and funded by a portion of oil and gas gross production tax revenues; to amend and reenact subsection 1 of section 57-51-15 of the North Dakota Century Code, relating to allocation of oil and gas gross production tax revenues; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 57-51-15 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. First an amount equal to one percent of the gross value at the well of the oil and gas upon which a tax is collected under this chapter must be deposited with the state treasurer, who shall credit thirty-three and one-third percent of the revenues to the oil and gas impact grant fund, but not in an amount exceeding five million dollars per biennium including any amounts otherwise appropriated for oil and gas impact grants for the biennium by the legislative assembly, and who shall credit the remaining revenues to the state general fund.

SECTION 2. A new section to chapter 57-62 of the North Dakota Century Code is hereby created and enacted to read as follows:

Oil and gas impact grant fund - Continuing appropriation. The moneys accumulated in the oil and gas impact grant fund must be allocated as provided by law and as appropriated by the legislative assembly for distribution through grants by the energy development impact office to oil and gas development impacted cities, counties, school districts, and other taxing districts. The amounts deposited in the oil and gas impact grant fund under subsection 1 of section 57-51-15 are hereby appropriated as a standing and continuing appropriation to the energy development impact office for grants as provided in this section.

SECTION 3. EFFECTIVE DATE. Sections 1 and 2 of this Act become effective on July 1, 1991.

Approved April 11, 1989
Filed April 11, 1989

CHAPTER 734

HOUSE BILL NO. 1479
(Goetz, Haugen, Gerhardt)

OIL EXTRACTION TAX EXEMPTION FOR WORK-OVER PROJECTS

AN ACT to create and enact a new subsection to section 57-51.1-03 of the North Dakota Century Code, relating to an exemption from the oil extraction tax for a well requiring a work-over project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-51.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator files a notice of intention to begin a work-over project with the industrial commission prior to commencement of the project and establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded either a minimum of sixty-five thousand dollars or a minimum of thirty thousand dollars if production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production prior to the filing of the notice required by this subsection. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil between June first and October thirty-first of any year is thirty-three dollars or more.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 735

HOUSE BILL NO. 1028
(Committee on Finance and Taxation)
(At the request of the Office of Management and Budget)

COAL SEVERANCE TAX FOR RESEARCH

AN ACT to create and enact a new section to chapter 57-61 of the North Dakota Century Code, relating to a separate and additional coal severance tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-61 of the North Dakota Century Code is hereby created and enacted to read as follows:

Separate and additional coal severance tax - Lignite research contracts. There is hereby imposed upon all coal severed for sale or for industrial purposes by coal mines within the state a tax, separate from and additional to the tax imposed by section 57-61-01, of two cents per ton of two thousand pounds [907.18 kilograms]. All of the provisions of this chapter for administration of the coal severance tax apply to the tax imposed under this section. The state tax commissioner shall transfer revenue from the tax imposed by this section to the state treasurer for deposit in a special fund in the state treasury, which is hereby created, to be known as the lignite research fund. Moneys in the lignite research fund must be available to the industrial commission for contracts with research facilities within this state. Such moneys must be used for contracts for land reclamation research projects and for research, development, and marketing of lignite and products derived from lignite. The industrial commission shall adopt rules for submission and consideration of research proposals and entering into contracts under this section.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 736

SENATE BILL NO. 2258
(Committee on State and Federal Government)
(At the request of the Office of Management and Budget)

ENERGY DEVELOPMENT IMPACT OFFICE ADMINISTRATION

AN ACT to amend and reenact section 57-62-04 of the North Dakota Century Code, relating to the location of the energy development impact office within the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-62-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-62-04. Energy development impact office - Appointment of director. There is hereby created an energy development impact office, to be a division within the office of the commissioner of the board of university and school lands, the director of which shall be appointed by and serve at the pleasure of the board of university and school lands. ~~The director's appointment shall be confirmed by the senate.~~ The director shall have knowledge of state and local government and shall have experience or training in the fields of taxation and accounting. The salary of the director shall be set by the ~~board commissioner~~ of university and school lands within the limits of legislative appropriations. The director may employ such other persons as may be necessary and may fix their compensation within the appropriation made for such purpose. The board of university and school lands shall fill any vacancy in the position of director in the same manner as listed above and, in addition, shall serve as an appeals board under rules promulgated by the board of university and school lands to reconsider grant applications for aid under this chapter which have been denied by the director. All action by the board of university and school lands, including appointment of a director, shall be by majority vote.

Approved March 9, 1989
Filed March 9, 1989

TOWNSHIPS

CHAPTER 737

HOUSE BILL NO. 1510
(Representatives Belter, Gorman, Wilkie)
(Senator Tennesfos)

TOWNSHIP OFFICERS AND BUDGETS

AN ACT to create and enact a new section to chapter 58-04 and a new subsection to section 58-06-01 of the North Dakota Century Code, relating to preparation of a budget for the township at its annual meeting and expansion of the board of township supervisors from three to five members; and to amend and reenact sections 58-04-02 and 58-05-02 of the North Dakota Century Code, relating to special township meetings and officers of a township.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 58-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-04-02. Special meetings - When held. A special township meeting may be held for the purpose of electing township officers to fill vacancies that occur, to authorize expansion of the board of township supervisors from three to five members, and for the purpose of transacting other lawful township business whenever the supervisors or township clerk, or any two of them, together with at least twelve freeholders of the township, shall file in the office of the township clerk a written statement that a special meeting is necessary, or whenever a special meeting is required by any other provision of the laws of this state.

SECTION 2. A new section to chapter 58-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Expansion of membership of the board of township supervisors. At the annual township meeting or a special meeting, the electors of the township may approve expansion of the board of township supervisors from three to five members. At the first annual meeting after a special meeting at which the expansion is authorized, or at the annual meeting at which the expansion is authorized, the electors of the township shall elect three members of the board of township supervisors. Two of the members of the board elected under this section must be elected for three-year terms and one supervisor must be elected for a two-year term. Thereafter, terms of office of members of the board of township supervisors will be as provided in section 58-05-02.

* SECTION 3. AMENDMENT. Section 58-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-05-02. Officers of a township - Terms of office. The elected officers of a civil township shall be:

1. Three or five supervisors.

* NOTE: Section 58-05-02 was also amended by section 6 of Senate Bill No. 2329, chapter 161.

2. One township clerk.
3. One assessor except as herein provided.
4. One treasurer.
5. ~~Two constables.~~

~~One~~ In townships with three-member boards of township supervisors, one supervisor shall be elected at each annual township meeting and shall hold ~~his~~ office for a term of three years. In townships with five-member boards of supervisors, the number of members of the board of supervisors whose terms ~~have expired~~ shall be elected at each annual township meeting and shall hold office for a term of three years. The other elective officers shall be elected every two years and shall hold their respective offices for a term of two years. Each officer shall serve until ~~his~~ that officer's successor is elected and qualified. The same person may hold the offices of township clerk and treasurer if a majority of the electors present vote in favor of the merging of such offices at the annual township meeting. The person elected to fill the merged office shall perform all of the duties required of both the township clerk and treasurer except as otherwise specifically provided by law. If a majority of the electors present and voting at an annual township meeting vote in favor of making the office of assessor appointive, the board of township supervisors shall appoint a township assessor for a four-year term of office, the first term commencing on January 1, 1974. In lieu of electing or appointing a township assessor, the board of township supervisors, if authorized by a majority of the electors present and voting at an annual township meeting, may on behalf of the township contract with the county in which the township is located or with any other political subdivision or with any individual to perform the duties of and have the powers of the township assessor. The length and terms of such a contract shall be negotiated by the board of township supervisors with the governing body of the county or other political subdivision or with the individual, as the case may be, and the township is hereby authorized to make such payments as may be provided for in the contract. The electors of any township in which the office of township assessor was abolished prior to July 1, 1973, shall, at the next annual township meeting, elect a township assessor or authorize the board of township supervisors to appoint a township assessor or to contract for the making of the assessment as hereinbefore provided. The township electors may by majority vote of those present and voting at an annual township meeting change the previously adopted method of providing for the assessment to either of the other two methods authorized in this section but such change shall not become effective until expiration of the term of office of the assessor or until a vacancy occurs in the office of assessor or until expiration of the contract for making the assessments, whichever is applicable according to the method of providing for the assessment that was previously adopted.

SECTION 4. A new subsection to section 58-06-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To submit a budget for the township at its annual meeting.

Approved April 13, 1989
Filed April 13, 1989

CHAPTER 738

HOUSE BILL NO. 1565
(Trautman, Howard, Vander Vorst, Melby)

TOWNSHIP OFFICER CONTRACTS

AN ACT to amend and reenact section 58-05-12 of the North Dakota Century Code, relating to instances in which a township officer may be a party to a contract with the township; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 58-05-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

58-05-12. Officers ~~not to be~~ interested in contracts of township. Except as otherwise provided by ~~law~~ this section, no township officer ~~shall~~ may become a party to or be interested, directly or indirectly, in any contract made by the board of which ~~he~~ the officer is a member. Every contract or payment voted for or made contrary to ~~the provisions of~~ this section is void. Any violation of this section ~~shall constitute~~ constitutes malfeasance in office which ~~will subject~~ subjects the offending officer ~~so offending~~ to removal from office. A township supervisor may become a party to or be interested, directly or indirectly, in any contract made by the board if:

1. No other qualified individual is willing to undertake the contract;
2. The supervisor does not vote on the contract; and
3. The other members of the board of supervisors vote unanimously in favor of the contract.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 29, 1989
Filed March 30, 1989

TRUSTS, USES, AND POWERS

CHAPTER 739

SENATE BILL NO. 2331
(Nething, Stenehjem, Satrom)

TRUST FUND INVESTMENTS

AN ACT to create and enact a new section to chapter 59-02 of the North Dakota Century Code, relating to investment of trust funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 59-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Investment of trust funds in mutual funds. Notwithstanding section 59-02-05, instead of investments specified in the trust, a trustee may invest trust funds in shares of investment companies registered under the Investment Companies Act of 1940, which invest in the investments specified in the trust.

Approved March 28, 1989
Filed March 28, 1989

WAREHOUSING AND DEPOSITS

CHAPTER 740

SENATE BILL NO. 2031
(Legislative Council)
(Interim Agriculture Committee)

GRAIN DISPUTE RESOLUTION

AN ACT to create and enact a new section to chapter 60-02 of the North Dakota Century Code, relating to the posting of a notice of grain dispute resolution procedures; and to amend and reenact section 60-02-05 of the North Dakota Century Code, relating to the resolution of disputes concerning grain.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-05. Duties of inspector Grain marketing - Procedure for resolving disputes.

1. If any dispute or disagreement arises between the person receiving and the person delivering grain at any public warehouse in this state as to the proper grade or, dockage, or both; moisture content, or protein content of any grain, an average sample of at least three pints of said the grain in dispute may be taken together by both parties interested. Such The sample must be certified by both the owner and the warehouseman each party as being a true and representative sample of the grain in dispute on the day upon which the grain was delivered. Such The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, to the commission; for inspection by the a federal licensed inspector, or a mutually agreed upon third party, who will examine said the grain and adjudge what grade or, dockage, or both; said moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades as promulgated adopted by the secretary of agriculture of the United States. The person requesting the inspection service must pay for the inspection. If the grain in question is damp or, otherwise out of condition, or if moisture content is in dispute, such the sample must be placed in an airtight container. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party. However, all other quality factors may also be considered in determining the price of the grain. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector. An appeal of the determination made by a federal licensed inspector may be made as provided under the United States Grain Standards Act [Pub. L. 90-487; 82 Stat. 764; 7 U.S.C. 79(c)] and under 7 CFR 800.125-800.140. A person not abiding by a

final determination is liable for damage resulting from not abiding by the determination.

2. If any dispute or disagreement arises between the person delivering grain and the person receiving grain as to the determination of quality factors of grain purchased or delivered in the state for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States, an average sample of at least three pints of the grain in dispute may be taken together by the parties interested. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, for inspection by a federal licensed inspector, or a mutually ~~agreeable~~ agreed upon third party, who may examine the grain and determine the quality factors in dispute. The person requesting the inspection service must pay for the inspection. The determination made by the inspector, or the third party, must be used in the settlement of the dispute.

SECTION 2. A new section to chapter 60-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Notice of procedures for resolving disputes over grain. A public warehouse must post a notice containing the procedures specified in section 60-02-05 for resolving disputes. The commission shall prescribe the form of the notice and shall provide a copy of the notice to each public warehouse. The public warehouseman shall post the notice in the grain inspection room of the warehouse. The notice must specifically mention that the procedure for resolving disputes applies to the grade, dockage, moisture content, and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 741

SENATE BILL NO. 2159

(Committee on Agriculture)

(At the request of the Public Service Commission)

GRAIN AND SEED WAREHOUSES

AN ACT to amend and reenact sections 60-02-07, 60-02-09.1, 60-02-11, 60-02-22, 60-02-35, 60-02-35.1, and 60-04-09 of the North Dakota Century Code, relating to grain and seed warehouses and insolvent grain warehousemen.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02-07 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-07. Public warehouse license - How obtained - Fee. A An annual license must be obtained through the commission for each public warehouse in operation in this state, and the license expires on July thirty-first of each year. No license so issued shall describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described therein. The annual license fee for a public warehouse shall be one hundred thirty dollars for a warehouse of a bushel capacity of two hundred thousand [7047.8 cubic meters] or less, two hundred sixty dollars for a warehouse of a bushel capacity of two hundred thousand and one to and including five hundred thousand [7047.83 to and including 17,619.54 cubic meters], and three hundred forty dollars for a warehouse of a bushel capacity of five hundred thousand and one [17,619.57 cubic meters] or more. The fees collected under this section shall be paid into the state treasury and credited to the general fund of the state. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such warehouses, and scale tickets, warehouse receipts, checks, and credit-sale contracts of but one series are issued for the grain stored and purchased therein, only one license shall be required for the operation of all such warehouses. Where two or more warehouses are operated under one license, the license fee shall be based upon the combined bushel capacity of said warehouses.

SECTION 2. AMENDMENT. Section 60-02-09.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-09.1. Bond cancellation - Release of surety. The surety on a bond shall be released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the commission of notice of cancellation by the surety, but this or on a later date specified by the surety. This provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the ninety-day period. Unless the warehouseman shall file files a new bond within sixty at least thirty days of receipt of

the notice of cancellation before liability ceases, the commission, without hearing, shall immediately suspend the warehouseman's license and the suspension shall not be removed until a new bond has been filed and approved by the commission. When a license is so suspended the warehouseman shall give notice of such suspension to each receiptholder having grain stored in the warehouse. The warehouseman shall further notify each receiptholder having grain stored in the warehouse that the grain must be removed from the warehouse or it will be priced and redeemed in cash in accordance with section 60-02-41.

SECTION 3. AMENDMENT. Section 60-02-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-11. Scale ticket - Contents. Every public warehouseman upon receiving grain into its warehouse, shall issue a uniform scale ticket for each load of grain received. Such tickets shall be numbered consecutively, and one copy of each ticket shall be retained and remain as a permanent record. The original ticket shall be delivered to the person from whom the grain is received, upon receipt of each load of grain. All scale tickets shall be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts within twenty thirty days after the grain is delivered to the warehouse.

SECTION 4. AMENDMENT. Section 60-02-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-22. Liability of warehouseman. A public warehouseman shall be liable to the owner for the delivery of the kind, grade, quality, and quantity of grain called for by the warehouse receipt. Unless otherwise agreed, the value of any difference in kind, grade, quality, and quantity must be settled at the price on the local market on the day the warehouseman receives written request for delivery. The warehouseman may withhold from delivery a sufficient quantity of grain, based upon the local market price, to satisfy the value of any difference in kind, grade, or quality.

SECTION 5. AMENDMENT. Section 60-02-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-35. Grain to be kept insured for benefit of owner by warehouseman - Proof filed with commission. No license may be issued to a public warehouseman unless all grain in storage or on deposit in the warehouse is kept fully insured at the expense of the warehouseman for the benefit of the owner at the current market value of the grain against loss by fire, lightning, internal explosion, windstorm, cyclone, tornado, and such other risks of direct physical loss as provided by the insurer in a policy approved by the commissioner of insurance. No insurance policy covering grain in a public warehouse shall be transferred or assigned to any person for any purpose whatever, except insofar as the same shall cover for grain in the warehouse which that is not kept on warehouse receipt or deposit. Proof of such insurance shall be filed with the public service commission annually. The insurance policy must be continuous and may only be canceled in accordance with section 60-02-35.1.

SECTION 6. AMENDMENT. Section 60-02-35.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-35.1. Insurance - Cancellation - Suspension of license. ~~Upon the existence of an effective insurance policy as required in section 60-02-35, the~~ An insurance company involved shall give at least thirty days' advance notice to the commission and the insured by registered certified mail return receipt requested of ~~any~~ before cancellation of ~~the an insurance policy required in section 60-02-35.~~ in event of any If insurance ~~cancellation or expiration is canceled,~~ the commission, without hearing, shall immediately suspend the license of the warehouseman, ~~and the suspension may not be removed until satisfactory evidence of the existence of an effective insurance policy has been submitted to the commission.~~

SECTION 7. AMENDMENT. Section 60-04-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-04-09. Report of trustee to court - Approval - Distribution. Upon the receipt and evaluation of claims filed with it, the commission shall file with the court a report showing the amount and validity of each claim after recognizing:

1. Any proper liens or pledges thereon.
2. Assignments thereof.
3. Deductions therefrom by reason of advances or offsets accrued in favor of the warehouseman.
4. In case of cash claims or checks, the amount thereof, with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency.
5. In the case of scale tickets or warehouse receipts, the amount thereof based upon the market price prevailing on the date of the insolvency, with interest at the weighted average prime rate charged by the Bank of North Dakota since the date of the insolvency.

The report must also contain a proposed distribution of the trust fund assets, less expenses incurred by the commission in the administration of this chapter, to claimants as their interests are determined. If the trust fund is insufficient to redeem all claims in full, the fund must be shown prorated in the report in the manner the commission deems fair and equitable.

The court shall set a time and place for hearing upon such and the appropriate notice as it prescribes, for interested persons to show cause why the commission's report should not be approved and distribution of the fund be made as outlined therein proposed. Copies of the report and notice of hearing must be served by the commission by registered certified mail upon the warehouseman and the surety ~~on the bond~~ and by ordinary mail upon all persons having claims filed with the commission.

Any aggrieved person having an objection to the commission's report shall set forth such file the objection fully and in writing, file it with the court, and serve copies upon on the commission, the warehouseman, and the surety on the bond no later than at least ten days prior to before the date of the hearing. Failure to file such objection and serve objections in the time specified may be deemed as set is a waiver of the objection by the court.

Following hearing, the court shall approve or modify the report and issue an order directing payment by the surety company of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust.

CHAPTER 742

HOUSE BILL NO. 1665
(Representatives Aarsvold, Myrdal, Vander Vorst)
(Senators Thane, Wogsland)
(Approved by the Committee on Delayed Bills)

BEAN STORAGE CONTRACT TERMINATION

AN ACT to amend and reenact sections 60-02-30 and 60-02-31 of the North Dakota Century Code, relating to termination of public grain warehouse storage contracts on edible beans; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-30. Termination of public grain warehouse storage contracts. All storage contracts on grain in store at public grain warehouses shall terminate on June thirtieth of each year, except for storage contracts on dry edible beans which shall terminate on April thirtieth of each year. Storage on any or all such grain in storage at public grain warehouses may be terminated by the owner at any time before the date mentioned herein by the payment of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of such the grain in storage, or notice to the warehouseman to sell the ~~same~~ stored grain. In the absence of a demand for delivery, an order to sell, or a request for the renewal of the storage contract, entered into prior to the expiration of the storage contract, for all grains except dry edible beans, the warehouseman shall sell, upon the expiration of the storage contract and compliance with section 60-02-31, at the local market price on the close of business on that day, sufficient amounts of ~~said~~ the stored grain to satisfy all accrued storage charges thereon and warehouseman's advances upon such the storage contract, and shall issue a new warehouse receipt for the balance of ~~said the~~ grain in storage to the owner thereof upon the surrender of the old warehouse receipt, properly canceled. Upon the expiration of the storage contract for dry edible beans, the warehouseman shall not be obligated to renew the storage contract. ~~The storage rate and all other terms of the storage contract for dry edible beans stored after April thirtieth shall be determined by the private agreement of the warehouseman and the receipt holder. Nothing in this chapter shall be construed to govern the provisions of a contract for the storage of dry edible beans after April thirtieth.~~ In the absence of a demand for delivery, an order to sell, or an agreement between the warehouseman and the receipt holder for the storage of dry edible beans after April thirtieth, the warehouseman may sell, upon the expiration of the storage contract, at the local market price on the close of business on that day, all the stored beans of the receipt holder and tender to the receipt holder the proceeds of the sale less an amount which will satisfy all accrued storage charges thereon and the warehouseman's advances upon any previous storage contract.

SECTION 2. AMENDMENT. Section 60-02-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-02-31. Notice to owner of termination of storage contract. On or before June first of each year, for all grains except dry edible beans, the warehouseman shall notify by mail the person in whose name the grain was stored of the termination of the storage contract on June thirtieth and the warehouseman's intention to sell a sufficient amount of such the stored grain on June thirtieth to satisfy accrued storage charges unless the receipt holder prior to that time demands redelivery, authorizes sale, or continues the storage contract. On or before April first of each year, a warehouseman storing dry edible beans shall notify by mail the person in whose name the dry edible beans are stored of his the warehouseman's intention to terminate the storage contract on April thirtieth, or at a later date pursuant to an agreement between the warehouseman and the receipt holder for the storage of dry edible beans after April thirtieth, and to sell all dry edible beans stored as of that date, unless the receipt holder prior to that time demands redelivery, authorizes sale, or enters into a new contract with the warehouseman for restorage. Failure to comply with this section shall result in the forfeiture of storage charges accrued for the grain during the previous twelve months.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 743

HOUSE BILL NO. 1502
(Representatives Gunsch, Laughlin)
(Senator W. Meyer)

ROVING GRAIN OR HAY BUYERS

AN ACT to create and enact eleven new sections to chapter 60-03 of the North Dakota Century Code, relating to the insolvency of roving grain or hay buyers; to amend and reenact sections 60-03-01, 60-03-02, 60-03-04, 60-03-04.1, and 60-03-06 of the North Dakota Century Code, relating to roving grain or hay buyers; to repeal section 60-03-09.1 of the North Dakota Century Code, relating to complaint procedure for roving grain or hay buyers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Claimant" means any person claiming to be injured by the default of the licensee in the payment for any grain or hay purchased or marketed by the licensee.
2. "Commission" means the public service commission.
- ~~2-~~ 3. "Credit-sale contract" means a written contract for the sale of grain pursuant to or hay under which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain or hay for sale and which contains the notice required in subdivision g of subsection 5 of section 60-03-04.1. Where a part of the sale price of a contract for the sale of grain or hay is to be paid or may be paid more than thirty days after the delivery or release of the grain or hay for sale, only such that part of the contract is a credit-sale contract.
- ~~3-~~ 4. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown domestic grain or grass seed.
5. "Licensee" means a roving grain or hay buyer licensed under this chapter.
- ~~4-~~ 6. "Roving grain or hay buyer" means any person, other than a public warehouseman, who buys is in the business of buying grain or hay from the owner for resale or markets grain or hay on behalf of the owner. "Roving grain or hay buyer" does not include a person

~~buying grain or hay from a licensed warehouse in this state; nor shall it include any producer of grain or hay who purchases grain or hay from other producers to complete a carload or truckload in which the greater portion of the load is grain or hay grown by the producer.~~

SECTION 2. AMENDMENT. Section 60-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-02. License - How obtained - Fee. Each roving grain or hay buyer operating within this state must obtain a license through the commission to expire ~~at midnight~~ on July thirty-first of each year. Each license ~~so issued shall~~ must designate the business address of the licensee, and each licensee shall have and maintain an agent for process within this state. The license fee which must accompany the application for license ~~shall be fifty~~ is seventy-five dollars.

SECTION 3. AMENDMENT. Section 60-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-04. Bond filing by roving grain or hay buyer. Before ~~any~~ a license is issued to any roving grain or hay buyer, the applicant shall file with the commission a bond in such sum as an amount set by the commission shall prescribe, but not less than fifty one hundred thousand dollars for each licensee. Such, except when the licensee pays cash for ninety percent of all grain or hay at the time of delivery and the remaining ten percent within twenty-four hours of the time of delivery to the licensee in which case the bond amount may not be less than fifty thousand dollars. The bond shall:

1. Cover the period of the license.
2. Run to the state of North Dakota for the use and benefit of all persons selling grain or hay to or through the licensee.
3. Be conditioned for the faithful performance of the duties of the licensee as a roving grain or hay buyer, and be for the specific purpose of protecting persons dealing with the licensee or ~~his or their~~ its agent or agents within the state of North Dakota from loss or damage by reason of any violation of this chapter.
4. Not accrue to the benefit of any person entering into a credit-sale contract with ~~a roving grain or hay buyer~~ the licensee.
5. Be governed by all of the provisions of law and rules applicable to the business of a roving grain or hay buyer ~~and the rules of the commission relating thereto~~.

The commission shall set the amount of the bond at a level it ~~in its discretion~~ deems necessary to accomplish the purposes of this section. The surety on ~~such a~~ each bond must be a corporate surety company, approved by the commission, and authorized to do business ~~within~~ in the state. The commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in its judgment, ~~such the~~ cash, negotiable instrument, or personal surety bond will properly protect persons dealing with the licensee or its agent within the state of North Dakota.

SECTION 4. AMENDMENT. Section 60-03-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-04.1. Credit-sale contracts. A roving grain or hay buyer ~~is prohibited from purchasing or marketing~~ may not purchase or market grain or hay by a credit-sale contract unless all of the following are complied with:

1. The roving grain or hay buyer shall file with the commission a bond in addition to that required by section 60-03-04 and in ~~such sum as an amount set by the commission may prescribe~~, but not less than fifty one hundred thousand dollars. The bond must cover the period of the license and run to the state of North Dakota for the use and benefit of all persons selling grain or hay to or through the licensee by credit-sale contract. The commission shall set the amount of the bond at a level it, ~~in its discretion~~, deems necessary to accomplish the purposes of this section. The surety on such a bond must be a corporate surety company, approved by the commission, and authorized to do business within the state. The commission may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond when, in its judgment, ~~such~~ the cash, negotiable instrument, or personal surety bond will properly protect persons selling grain or hay ~~to or through the licensee~~ by credit-sale contracts.
2. The ~~roving grain or hay buyer~~ licensee shall file with the commission a current financial statement setting forth ~~its the licensee's~~ financial position and results in operations for the ~~licensee's~~ most recent fiscal period ~~of the licensee and prepared in conformity with~~. The financial statement must conform to generally accepted accounting principles.
3. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing ~~the contract~~. A copy of the printed form used for the credit-sale contract must be filed with and approved by the commission at the beginning of each license period. A series of consecutively numbered approved contracts ~~approved for use by the commission~~ shall not be used in any other state.
4. The ~~roving grain or hay buyer~~ licensee shall maintain an accurate record of ~~all the disposition of each credit-sale contract numbers including the disposition of each numbered form; whether, by execution, destruction, or otherwise form~~.
5. Each credit-sale contract must contain or provide for all of the following:
 - a. The seller's name and address.
 - b. The terms and conditions of delivery.
 - c. The amount and kind of grain or hay delivered.
 - d. The price per unit or basis of value.

- e. The date payment is to be made which must not exceed one hundred twenty days from the date the grain or hay is delivered.
 - f. The duration of the credit-sale contract, which must not exceed twelve months from the date the contract is executed.
 - g. Notice in a clear and prominent manner that the sale is by credit-sale contract which is not protected by the bond coverage provided for in section 60-03-04 and that an additional bond covering credit-sale contracts is required by section 60-03-04.1.
6. The contract must be ~~signed~~ executed in duplicate by both parties ~~and executed in duplicate~~. One copy shall be retained by the licensee and one copy shall be delivered to the seller.
 7. Upon revocation, termination, or cancellation of a ~~roving grain or hay buyer's~~ license, the payment date for all credit-sale contracts shall, at the seller's option, be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract.

SECTION 5. AMENDMENT. Section 60-03-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-03-06. Penalty. Any person who shall violate any provisions of this chapter or any rule adopted pursuant to this chapter, ~~where punishment is not otherwise provided for, shall be~~ is guilty of an infraction a class B misdemeanor.

SECTION 6. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Insolvency of roving grain or hay buyer. A licensee is insolvent when the licensee defaults in payment for grain or hay purchased or marketed by the licensee.

SECTION 7. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Appointment of commission. Upon the insolvency of any licensee, the commission shall apply to the district court of Burleigh County, North Dakota for authority to take all action necessary to act as trustee of the trust fund described in section 8 of this Act. Upon notice to the licensee as the court shall prescribe, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the claimants that the commission secure and execute the trust, the court shall issue an order granting the application, without bond, and the commission shall proceed to exercise its authority without further direction from the court.

Upon the filing of the commission's application, the court may issue ex parte a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.

SECTION 8. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Trust fund established. Upon the insolvency of any licensee, a trust fund must be established for the benefit of claimants and to pay the costs incurred by the commission in the administration of the insolvency. The trust fund must consist of the following:

1. Grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of stored grain.
2. The proceeds of insurance policies on grain destroyed in storage.
3. The claims for relief, and proceeds therefrom, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.

SECTION 9. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Joinder of surety - Deposit of proceeds. Each surety on the insolvent licensee's bonds must be joined as a party to the insolvency proceeding. If it is in the best interests of the claimants, the court may order a surety to deposit some or all of the penal sum of the bond into the trustee's trust account pending determination of the surety's liability under the bond.

SECTION 10. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Notice to claimants. Upon its appointment the commission may take possession of relevant books and records of the licensee. The commission shall publish a notice of its appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, potential claimants disclosed by the licensee's records. The notice must require claimants to file their claims with the commission along with the receipts or other evidence of the claims required by the commission. If a claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the commission, the commission is relieved of further duty in the administration of the insolvency on behalf of the claimant and the claimant may be barred from participation in the trust fund. Claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 11. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Remedy of claimants. No claimant has a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other claimant, except through the trustee, unless, upon demand of five or more claimants, the commission fails or refuses to apply for its own appointment or unless the district court denies the application. Sections 6 through 16 of this Act do not prohibit any claimant, either individually or in conjunction with other claimants, from

pursuing concurrently any other remedy against the person or property of the licensee.

SECTION 12. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Commission to marshal trust assets. Upon its appointment the commission shall marshal all of the trust fund assets. The commission may maintain suits in the name of the state of North Dakota for the benefit of all claimants against the licensee's bonds, insurers of grain, any person who may have converted any grain and any who may have received preferential treatment by being paid by the insolvent licensee after the first default.

SECTION 13. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Power of commission to prosecute or compromise claims. The commission may:

1. Prosecute any action provided in sections 6 through 16 of this Act in any court in this state or in any other state.
2. Appeal from any adverse judgment to the courts of last resort.
3. Settle and compromise any action when it will be in the best interests of the claimants.
4. Upon payment of the amount of any settlement or of the full amount of any bond, exonerate the person so paying from further liability growing out of the action.

SECTION 14. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Money received by trustee - Deposited in Bank of North Dakota. All funds received by the commission as trustee must be deposited in the Bank of North Dakota.

SECTION 15. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Report of trustee to court - Approval - Distribution. Upon the receipt and evaluation of claims the commission shall file with the court a report showing the amount and validity of each claim after recognizing relevant:

1. Liens or pledges.
2. Assignments.
3. Deductions due to advances or offsets accrued in favor of the licensee.
4. In case of cash claims or checks, the amount of the claim, with interest from the date of default at the weighted average prime rate charged by the Bank of North Dakota.

The report must also contain the proposed distribution of the trust fund assets, less expenses incurred by the commission in the administration of the insolvency. If the trust fund is insufficient to redeem all claims in full, the report should list the funds as prorated.

The court shall set a hearing and the appropriate notice for interested persons to show cause why the commission's report should not be approved and distribution of the fund be made as proposed. Copies of the report and notice of hearing must be served by the commission by certified mail upon the licensee and the surety and by ordinary mail upon all claimants.

Any aggrieved person having an objection to the commission's report shall file the objection with the court and serve copies on the commission, the licensee, and the surety at least ten days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.

Following hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust.

SECTION 16. A new section to chapter 60-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Filing fees and court costs - Expenses. The commission may not be required to pay any filing fee or other court costs or disbursements. The attorney general may appoint outside legal counsel to assist the commission in the prosecution of the action and the cost of employing outside counsel may be paid from the trust fund. All other necessary expenses incurred by the commission in carrying out the provisions of this chapter, including adequate insurance to protect the commission, its employees, and others engaged in carrying out the provisions of sections 6 through 16 of this Act, may be paid from the trust fund.

SECTION 17. REPEAL. Section 60-03-09.1 of the North Dakota Century Code is hereby repealed.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 744

HOUSE BILL NO. 1131
(Representatives Mertens, Whalen, Martin)
(Senators Vosper, Krauter, Maixner)

RAILROAD RIGHT OF WAY WAREHOUSES

AN ACT to amend and reenact section 60-06-15 of the North Dakota Century Code, relating to warehouse leases on railroad rights of way; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-06-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

60-06-15. Application to existing leaseholds. The provisions of this chapter ~~shall~~ apply to the renewal of existing leaseholds on railroad rights of way, and to existing leaseholds on lands that have ceased to be used for railroad rights of way after the leasehold was first created, and so long thereafter as the lease site remains under the ownership or control of the railroad or an entity that was or is under common ownership or control of the railroad. The value of a leaseholder's improvements may not be considered in determining annual rental or the gross sum for the right, privilege, and easement sought.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 29, 1989
Filed March 30, 1989

WATERS

CHAPTER 745

SENATE BILL NO. 2174
(Committee on Natural Resources)
(At the request of the State Engineer)

WATER OBSTRUCTIONS AND APPROPRIATIONS

AN ACT to create and enact a new section to chapter 61-03 of the North Dakota Century Code, relating to the authority of the state engineer to levy civil penalties for unauthorized construction of works or appropriation of water; and to amend and reenact sections 61-01-23, 61-02-41, and 61-03-21.2 of the North Dakota Century Code, relating to access to rivers and streams for removal of obstructions and authority of the state engineer to survey water appropriations and regulate unauthorized or unsafe structures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-01-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-01-23. ~~Removal~~ Investigation or removal of obstructions in channel of ~~nonnavigable streams~~. In order to investigate or remove obstructions, ~~such as logs, fallen trees and brush from the channel or bed of a nonnavigable river or stream~~ any watercourse and thus prevent ice from gorging therein and to prevent flooding or pollution of such ~~stream or river watercourse~~, the state water commission, any water resource district, any municipality, any board of county commissioners and any federal agency authorized to construct works for prevention of damage by floods or for abatement of stream pollution, may enter upon lands lying adjacent to such ~~nonnavigable stream watercourse~~ to investigate or remove, or cause to be removed from the bed, channel or banks of such ~~stream watercourse~~ obstructions which prevent or hinder the free flow of water or passage of ice therein. However, such entry upon adjacent lands shall be by the most accessible route and the entering agency shall be responsible to the landowner for any damage.

SECTION 2. AMENDMENT. Section 61-02-41 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-02-41. ~~Commission may enter to make surveys~~ Surveys for the diversion of waters. For the purpose of regulating the diversion of the natural flow of waters, the ~~commission~~ state engineer may enter upon the means and place of use of all appropriators for the purpose of making surveys of respective rights and seasonal needs.

SECTION 3. AMENDMENT. Section 61-03-21.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-03-21.2. Removal of unsafe or unauthorized works. If the state engineer pursuant to his authority under title 61 determines that works are

unsafe or unauthorized, the state engineer shall notify the landowners by registered mail at the landowner's last known post-office address of record. A copy of the notice shall also be sent to ~~the~~ any tenant, if ~~any~~ the state engineer has actual knowledge of the fact that a tenant exists. The notice shall specify the nature and extent of the noncompliance, the modifications necessary for compliance, and shall state that if the works are not modified or removed within the period stated in the notice, but not less than thirty days, the state engineer shall cause the removal of the works and assess the cost thereof, or such portion as the state engineer shall determine, against the property of the landowner responsible. The notice shall also state that the affected landowner may, within fifteen days of the date the notice is mailed, demand, in writing, a hearing upon the matter. The request for a hearing must state with particularity the issues, facts, and points of law to be presented at the hearing. If the state engineer determines the issues, facts, and law to be presented are well founded and are not frivolous and the request for a hearing was not made merely to interpose delay the state engineer shall set a hearing date within fifteen days from the date the demand is received without undue delay. In the event of an emergency, the state engineer may immediately apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the works, or ordering the landowner to remove the works. Any assessments levied under the provisions of this section shall be collected in the same manner as other assessments authorized by this title. If, in the opinion of the state engineer, more than one landowner or tenant has been responsible, the costs may be assessed on a pro rata basis in proportion to the responsibility of the landowners. Any person aggrieved by action of the state engineer under the provisions of this section may appeal the decision of the state engineer to the district court of the county in which the land is located in accordance with the procedures provided under chapter 28-32. A hearing as provided for in this section is a prerequisite to an appeal, unless the hearing was denied by the state engineer.

For purposes of this section the term "works" includes dams, dikes, or other devices for water conservation, flood control, regulation, storage, diversion, or carriage of water.

SECTION 4. A new section to chapter 61-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Penalties - Civil. In addition to criminal sanctions that may be imposed pursuant to law, a person who knowingly violates any provision of this title or any rules adopted under this title may be assessed a civil penalty not to exceed five thousand dollars for each day the violation occurred and continues to occur and may be required by the state engineer to forfeit any right to the use of water. The civil penalty or forfeiture of a right to use water may be adjudicated by the courts or by the state engineer through an administrative hearing under chapter 28-32.

If a civil penalty levied by the state engineer after an administrative hearing is not paid within thirty days after a final determination that the civil penalty is owed, the civil penalty may be assessed against the property of the landowner responsible for the violation leading to the assessment of the penalty. The assessment must be collected as other assessments made under this title are collected. Notwithstanding the provisions of section 57-20-22, all interest and penalties due on the assessment must be paid to the state. Any civil penalty assessed under this section must be in addition to any costs incurred by the state engineer for enforcement of the order.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 746

HOUSE BILL NO. 1188
(Committee on Natural Resources)
(At the request of the State Engineer)

WATER PROJECT CONDEMNATION

AN ACT to create and enact a new section to chapter 61-02 of the North Dakota Century Code, relating to the condemnation power of the state water commission for the southwest pipeline project; and to amend and reenact subsection 2 of section 61-16.1-09 of the North Dakota Century Code, relating to the powers of water resource boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Condemnation by the water commission. Whenever a right of way is to be taken by condemnation proceedings for any purpose authorized by chapter 61-24.3, the commission may take possession of the right of way after making a written offer to purchase and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located. The clerk shall immediately notify the property owner in writing of such deposit. Within thirty days after receiving such notice, the property owner may appeal to the district court by serving notice of appeal upon the water commission and the matter must be tried at the next term of court with a jury, unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

SECTION 2. AMENDMENT. Subsection 2 of section 61-16.1-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by this chapter, and particularly to acquire the necessary rights in land for the construction of dams, flood control projects, and other water conservation, distribution, and supply works of any nature and to permit the flooding of lands, and to secure the right of access to such dams and other devices and the right of public access to any waters impounded thereby. Provided, however, that when the interest sought to be acquired is a right of way for any project authorized in this chapter for which federal funds have been appropriated, the district, after making a written offer to purchase the right of way and depositing the amount of the offer with the clerk of the district court of the county wherein the right of way is located, may thereupon take immediate possession of the right of way, as authorized by section 16 of article I of the Constitution of North Dakota.

Within thirty days after notice has been given in writing to the landowner by the clerk of the district court that a deposit has been made for the taking of a right of way as authorized in this subsection, the owner of the property taken may appeal to the district court by serving a notice of appeal upon the acquiring agency, and the matter must be tried at the next regular or special term of court with a jury unless a jury be waived, in the manner prescribed for trials under chapter 32-15.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 747

SENATE BILL NO. 2091
(Committee on Natural Resources)
(At the request of the State Engineer)

STATE ENGINEER INSPECTION DUTIES

AN ACT to repeal sections 61-03-07 and 61-03-09 of the North Dakota Century Code, relating to the state engineer's duty to investigate coal-bearing lands and to investigate bridges and culverts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 61-03-07 and 61-03-09 of the North Dakota Century Code are hereby repealed.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 748

HOUSE BILL NO. 1129
(Committee on Natural Resources)
(At the request of the State Engineer)

WATER USE PERMITS AND FEES

AN ACT to amend and reenact subsection 3 of section 61-04-01.1, sections 61-04-04.1, 61-04-05, 61-04-27, 61-04-29, and 61-04-30 of the North Dakota Century Code, relating to the definition of domestic use, application fees for water permits, notice of a water permit application, water use reports required by the state engineer, and enforcement of water rights and the enjoining of unauthorized uses through the administrative process; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 61-04-01.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. "Domestic use" means the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including, but not limited to heating, drinking, washing, sanitary and culinary uses; irrigation of land not exceeding one acre [.40 hectare] in area for noncommercial gardens, orchards, lawns, trees, or shrubbery; and for household pets and domestic animals kept for household sustenance and not for sale or commercial use, when the water is supplied by the individual or family unit. Also included within this use are "domestic rural uses" which must be defined by the state engineer by rule.

SECTION 2. AMENDMENT. Section 61-04-04.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-04.1. Application fees. The following fees shall accompany an application and shall be paid by the state engineer into the ~~general fund~~ water use fund of the state treasury:

1. For municipal or public use in municipalities or other entities of 2,500 population or over according to the latest federal census \$250
2. For municipal or public use in municipalities or other entities of less than 2,500 population according to the latest federal census \$150
3. For irrigation \$100
4. For industrial use of one c.f.s. or less, or seven hundred twenty-four acre-feet [893,039.52 cubic meters] or less \$150
5. For industrial use in excess of one c.f.s., or in excess of seven hundred twenty-four acre-feet [893,039.52 cubic meters] \$500

6. For recreation, livestock, or fish and wildlife \$ 50
7. For commercial recreation \$100

SECTION 3. AMENDMENT. Section 61-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-05. Notice of application - Contents - Proof - Failure to file satisfactory proof. When application is filed which complies with the provisions of this chapter and the rules and regulations established ~~thereunder~~ adopted under this chapter, the state engineer shall instruct the applicant to: ~~to give~~

1. Give notice ~~thereof~~ of the application by certified mail in the form prescribed by ~~regulation rule~~, to all record title owners of real estate within a radius of one mile [1.61 kilometers] from the location of the proposed water appropriation site, except ~~where~~:
 - a. If the one-mile ~~to 1.61 kilometers~~ [1.61-kilometer] radius extends within the geographical boundary of a city, the notice ~~shall~~ must be given to the governing body of ~~such~~ the city and no further notice need be given to the record title owners of real estate within the geographical boundary of the city; ~~and~~ ~~to publish~~
 - b. If the one-mile [1.61-kilometer] radius includes land within the geographical boundary of a rural subdivision where the lots are of ten acres [4.04 hectares] or less, the notice must be given to the governing body of the township or other governing authority for the rural subdivision and no further notice need be given to the record title owners of real estate within the geographical boundary of the rural subdivision;
 - c. If the one-mile [1.61-kilometer] radius includes a single tract of rural land which is owned by more than ten individuals, the notice must be given to the governing body of the township or other governing authority for that tract of land and no further notice need be given to the record title owners of that tract.
2. Provide the state engineer with an affidavit of notice by certified mail within sixty days from the date of the engineer's instructions to provide notice. If the applicant fails to file satisfactory proof of notice by certified mail within sixty days and in compliance with the applicable rules, the state engineer shall treat the application as an original application filed on the date of receipt of the affidavit of notice by certified mail in proper form. Upon receipt of a proper affidavit of notice by certified mail, the state engineer shall publish notice ~~thereof~~ of the application, in a form prescribed by ~~regulation rule~~, in a newspaper of general circulation in the area of the proposed appropriation site, once a week for two consecutive weeks. ~~Such~~ The notice ~~shall~~ must give all essential facts as to the proposed appropriation, ~~among them~~ including the places of appropriation and of use, amount of water, the purpose for which it is to be used use, the name and address of the applicant, and the time and place of a hearing on the application by the state engineer. Proof of publication shall be filed with the state engineer within sixty

days from the date of his instructions to make publication. In case of failure within the time required to file satisfactory proof of publication in accordance with the rules and regulations applicable thereto, the application thereafter shall be treated as an original application filed on the date of receipt of proof of publication in proper form. The applicant shall pay all costs of the publication of notice.

SECTION 4. AMENDMENT. Section 61-04-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-27. Information filed with state engineer - Installation of measuring devices. On or before the first day of February of each year all water users persons holding a water permit, including irrigation districts, federal agencies, and political subdivisions, shall file with the state engineer, on forms supplied by the state engineer, topographic, mapping, foundation test borings, design, water use, and such other information as the state engineer shall require. The state engineer may also require any such water users persons to install measuring devices, which shall conform to the state engineer's specifications, at all points specified by the state engineer.

SECTION 5. AMENDMENT. Section 61-04-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-29. Enforcement. The state engineer shall have full power and authority to institute, maintain, and prosecute to determination in an administrative proceeding or any of the courts of this state, or in any of the federal courts, any and all actions, suits, and special proceedings that may be necessary to enjoin unauthorized use of water, to enforce an order of the state engineer or the state water commission, or to otherwise administer the provisions of this chapter. Notwithstanding any other provision of law, the state engineer may issue administrative orders requiring the immediate cessation of water use when the state engineer has a reasonable belief that such use is unauthorized or continued use will damage the rights of prior appropriators.

SECTION 6. AMENDMENT. Section 61-04-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04-30. Penalty. A person who constructs works for an appropriation, or diverts, impounds, withdraws, or uses a significant amount of water from any source without a permit specifically authorizing such action, except as otherwise provided in section 61-04-02; or a person who violates an order of the state engineer to cease and desist from preventing any water from moving to a person having a prior right to use the same; or who disobeys an order of the state engineer requiring him to take steps to cause the water to so move; or who fails or refuses to install meters, gauges, or other measuring devices or to control works; or who violates an order establishing corrective controls for an area or for a source of water; or who violates the terms of the permit; or who knowingly makes a false or misleading statement in a declaration of existing rights, is guilty of a class A misdemeanor. As used in this section, "significant amount of water" means any amount of water in excess of that allowed in a valid water permit, or any amount of water in excess of the needs for domestic and livestock purposes where no permit has been issued.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 749

HOUSE BILL NO. 1179
(Whalen)

WEATHER MODIFICATION CONTRACT BONDS

AN ACT to amend and reenact sections 61-04.1-34 and 61-04.1-35 of the North Dakota Century Code, relating to the performance bond and bid bond required for weather modification contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-04.1-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04.1-34. Performance bond required. Before the board shall contract with any controller, it shall require the controller to furnish a surety bond or cash or negotiable securities for the faithful performance of the contract in such amount as determined by the board, conditioned that the licensee and his agents will in all respects faithfully perform all weather modification contracts undertaken with the board and will comply with all provisions of this chapter and the contract entered into by the board and the licensee.

SECTION 2. AMENDMENT. Section 61-04.1-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-04.1-35. Bid bond required. All bids submitted to the board of weather modification for operations conducted under this chapter shall be accompanied by a separate envelope containing a bidder's bond or cash or negotiable securities in a sum equal to five percent of the full amount of the bid, executed by the bidder as principal ~~and~~ or by a surety company authorized to do business in this state as a guaranty that the bidder will enter into the contract if it is awarded to him.

Approved March 9, 1989
Filed March 9, 1989

CHAPTER 750

HOUSE BILL NO. 1397
(Hokana)

IRRIGATION DISTRICT DIRECTORS RESIDENCY

AN ACT to amend and reenact section 61-06-01 of the North Dakota Century Code, relating to the residency requirements of the board of directors of an irrigation district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-06-01. Board of directors of irrigation district - Terms - Vacancies. If an irrigation district contains less than ten thousand irrigable acres [4046.86 irrigable hectares] of land and is not divided into precincts or divisions, the board of directors thereof shall consist of five directors who shall be residents of the state and electors of the district and shall be elected at large. Two directors elected at the election for the organization of the district shall serve until the first Tuesday in April following the first regular district election, and three directors shall serve until the first Tuesday in April following the second regular election.

If an irrigation district contains ten thousand irrigable acres [4046.86 irrigable hectares] or more, it shall be divided into five or seven divisions or precincts, as the case may be, and one director shall be elected from and by the electors of each division or precinct.

If an irrigation district contains ten thousand irrigable acres [4046.86 irrigable hectares] or more and is divided into five divisions or precincts, the board of directors of such irrigation district shall consist of five directors. Two directors elected at the election for the organization of the district shall serve until the first Tuesday in April following the first regular district election, and three directors shall serve until the first Tuesday in April following the second regular district election.

If an irrigation district contains ten thousand irrigable acres [4046.86 irrigable hectares] or more and is divided into seven divisions or precincts, the board of directors of such irrigation district shall consist of seven directors. Three directors elected at the election for the organization of the district shall serve until the first Tuesday in April following the first regular district election, and four directors shall serve until the first Tuesday in April following the second regular district election.

The terms of office of the directors elected at such first election for the organization of the district shall be determined by lot at their first meeting. Directors elected at subsequent elections shall serve for four

years and until their successors are duly elected and qualified. In case the office of any director shall become vacant, the remaining members of the board shall fill the vacancy by appointment. A director appointed to fill a vacancy shall serve the unexpired term of the director whose office he has been appointed to fill. In the event that vacancies shall occur in the offices of a majority of the directors of an irrigation district, the remaining members and the state engineer shall fill the vacancies; and in the event that the offices of all the directors shall become vacant, the state engineer shall appoint the members of the board and they shall serve until the next regular election of the district. Their successors in office shall then be elected to serve the unexpired term of the directors whose offices became vacant. The unexpired term of office which each director thus elected shall fill shall be determined by lot.

At the regular irrigation district election in 1984, the secretary of any existing irrigation district which has only three directors shall include in the notice of election a statement that irrigation districts must have five directors, and that the two new positions for director will be filled at the upcoming district election. The notice shall also state that any elector desiring to be a candidate for the office of district director and to have the elector's name appear on the ballot for one of the new openings for the office of director must file a request with the secretary of the board not less than twenty days before the election. For the irrigation districts with only three directors, the directors elected for the two new positions, and the director elected to fill the office of the existing director whose regular term would have expired in 1984, shall be elected to four-year terms. The remaining directors of existing irrigation districts with three directors whose terms do not expire in 1984 shall serve until the next regular election of the irrigation district, which shall be in 1986. Directors elected at the regular election of an irrigation district in 1986 shall then be elected for four-year terms.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 751

HOUSE BILL NO. 1281
(Representatives Marks, Stofferahn, Dalrymple)
(Senators Axtman, Vosper, Dotzenrod)

IRRIGATION WATER ON ROADWAYS

AN ACT to create and enact a new section to chapter 61-14 of the North Dakota Century Code, relating to placing and operating irrigation works or equipment near, on, or over roadways; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

Willfully allowing water to flow or fall upon roadway prohibited - Penalty. No person may place, erect, or operate a sprinkler irrigation system, center pivot irrigation system, or other irrigation works or equipment upon or across any highway, street, or road or in such a manner as to willfully allow water from the irrigation works or equipment to flow or fall upon any highway, street, or road. This section does not apply to the transportation of irrigation works or equipment upon a highway, street, or road. A person violating this section is guilty of an infraction.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 1989
Filed April 7, 1989

CHAPTER 752

HOUSE BILL NO. 1284

(Wilkie, P. DeMers, Gilmore, Gerntholz, Nowatzki)

WATER PROJECT APPROVAL

AN ACT to amend and reenact sections 61-16.1-12.1, 61-16.1-18, and 61-16.1-19 of the North Dakota Century Code, relating to approval of proposed water projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-12.1 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-12.1. Water resource boards - Agreements with state or federal agencies for certain improvements. A water resource board may enter into an agreement with any federal or state agency, or any combination thereof, for the construction of a project, under the terms of which the contract for the work is to be let by the federal or state agency or any combination thereof. If under the terms of the agreement at least fifty percent of the total cost of constructing the project is to be paid by the agency or agencies and if any portion of the cost of the project is to be paid by the levy of special assessments, the board may by resolution create a project assessment district for the purpose of levying special assessments to finance the amount that the district will be obligated to pay in accordance with the agreement, over and above any other funds which are on hand and properly available for that purpose. The assessment district must be of a size and form as to include all properties which in the judgment of the board, after consultation with a registered engineer designated by the board for that purpose, will be benefited by the construction of the proposed project, and the board shall direct the engineer to prepare a map showing the boundaries of the proposed assessment district. The board shall by resolution declare the necessity of the project, set forth the general nature and purpose of the proposed project, estimate the total cost of the project, and the approximate amount or fraction of the cost which the district will be obligated to pay under the agreement, and the fact that this amount, or a lesser amount as the board may specify, is proposed to be paid by the levy of special assessments upon property within the assessment district determined to be benefited by the project. The board shall cause the resolution of necessity together with a copy of the map showing the boundaries of the assessment district and a notice stating the date and time by which the owners of any property liable to be specially assessed for the proposed project must file written protests against the project their votes on the proposed project with the secretary of the board to be mailed to each landowner affected by the proposed project as determined by the tax rolls of the county in which the affected property is located. The board may send the material by certified mail or by regular mail attested by an affidavit of mailing signed by the attorney or secretary of the board. The notice must also set forth the time and place where the board shall meet to hear and determine whether the sufficiency of any

protests against the project is approved. The notice must also be published once each week for two consecutive weeks in the a newspaper or newspapers of general circulation in the district and once in the official county newspaper of each county in which the benefited lands are located. Within five days after the first publication mailing of the resolution the board shall cause a copy of the resolution to be personally served upon any county, city, or township, in its corporate capacity which may be benefited directly or indirectly from the construction of the proposed project and upon any county which may become liable for any deficiency in the fund to be created for the project, by delivering a copy of the resolution to any member of the governing body thereof. The meeting must be held not less than thirty days after the first publication mailing of the resolution, at which time the board shall hear and determine whether the sufficiency of the written protests. If the board finds the protests filed within thirty days after the first publication of the resolution contain the names of the owners of a majority by taxable value of the land subject to assessment for the construction of the proposed project, then the protests bar further proceedings project is approved. If the board finds the protests to be insufficient that fifty percent or more of the total votes filed are against a proposed project, then the board may not proceed further with the proposed project. If the board finds that less than fifty percent of votes filed are against the proposed project, the board may proceed with the project. In any assessment district created under this section the board may dispense with all other requirements of this chapter, other than those stated in this section. After the contract for the work has been let, the board may issue warrants on the fund of the project for the total amount of the cost thereof, and the board, without holding the hearing required by section 61-16.1-18, shall proceed to determine and levy any assessments against property benefited by the project and prepare an assessment list all in accordance with the procedures required by sections 61-16.1-21 through 61-16.1-24, both inclusive. The provisions of sections 61-16.1-25 through 61-16.1-36, both inclusive, shall be are applicable to such the assessments and the special warrants issued pursuant to this section.

SECTION 2. AMENDMENT. Section 61-16.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-18. Hearing - Notice - Contents. Upon the filing of the engineer's report provided for in section 61-16.1-17, and after satisfying the requirements of section 61-16.1-21, the water resource board shall fix a date and place for public hearing on the proposed project. Such The place of hearing shall must be in the vicinity of the proposed project and shall must be convenient and accessible for the majority of the landowners subject to assessment for such the project or whose property shall be is subject to condemnation for the proposed project. The board shall cause a complete list of the benefits and assessments to be made, setting forth each county, township, or city assessed in its corporate capacity as well as each lot, piece, or parcel of land assessed, the amount each is benefited by the improvement and the amount assessed against each. At least ten days before the hearing, the board shall file with the county auditor of each county or counties in which the project is or will be located the list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto. Notice of such the filing shall must be included in the notice of hearing. Notices of the hearing shall must contain a copy of the resolution of the board as well as the time and place where the board will conduct the hearing. The notice of hearing shall must specify the general nature of the project as

finally determined by the engineer and the board. The notice of hearing shall must also specify when and where protests against such votes concerning the proposed project shall may be filed and an assessment list showing the percentage assessment against each parcel of land benefited by the proposed project and the approximate assessment in terms of money apportioned thereto. The board shall cause the notice of hearing to be published once a week for two consecutive weeks in the newspaper or newspapers of general circulation in the area in which the affected landowners reside, and in the official county newspaper of each county in which the benefited lands are located. The date set for such the hearing shall must not be less than twenty days after the first publication mailing of the notice. A record of the hearing shall must be made by the board, including a list of affected landowners present in person or by agent, and such the record shall must be preserved in the minutes of the meeting. Affected landowners, and the governing body of any county, township, or city to be assessed, shall must be informed at the hearing of the probable total cost of the project and their individual share of such the cost and the portion of their property, if any, to be condemned for such the project.

SECTION 3. AMENDMENT. Section 61-16.1-19 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-19. Protest Voting on proposed projects. At the hearing, the affected landowners, and any county, township, or city to be assessed, shall must also be informed when and where protests against such votes concerning the proposed project may be filed. Affected landowners, and the governing body of any county, township, or city to be assessed, shall then have thirty days after the date of the hearing to file written protests their votes with the secretary of the water resource board, protesting concerning the project. Any form of written objection which sufficiently indicates the intention of the writer shall be sufficient. Once the deadline for filing protests against the proposed project votes has been reached, no more protests votes may be filed and no person may withdraw his or her name from the list of those filing protests against the proposed project a vote. Any withdrawal of a protest against vote concerning the proposed project before that time must be in writing. When the protests votes have been filed and the deadline for filing protests votes has passed, the board shall immediately determine the sufficiency of the protests whether the project is approved. If the board finds that fifty percent or more of the total votes, as determined by section 61-16.1-20, have protested filed are against the proposed project, then the protests shall be vote constitutes a bar against proceeding further with the project. If the protests are found to be insufficient in number or invalid, board finds that the number of votes filed against the proposed project is less than fifty percent of the votes filed, the board shall issue an order establishing the proposed project and may proceed, after complying with the requirements of sections 61-16.1-21 and 61-16.1-22, to contract or provide for the construction or maintenance of the project in substantially the manner and according to the forms and procedure provided in title 40 for the construction of sewers within municipalities. The board may enter into an agreement with any federal or state agency under the terms of which the contract for the project is to be let by the federal agency, the state agency, or a combination thereof. In projects where there is an agreement that a party other than the board will let the contract, the board may dispense with all of the requirements of title 40. Upon making an order establishing or denying establishment of a project, the board shall publish notice of the order in a newspaper of general circulation in the area in which the affected landowners reside, and in the official county newspaper of each county in which the benefited lands are located. Any right of appeal shall begin begins to run on the date of publication of the notice. As used in this section, "board" means water resource board.

CHAPTER 753

SENATE BILL NO. 2080
(Senators Lodoen, Nelson)
(Representatives R. Larson, Lindgren)

WATER BENEFITS ASSESSMENT NOTICE

AN ACT to amend and reenact sections 61-16.1-26 and 61-21-44 of the North Dakota Century Code, relating to reassessment of benefits for water and drainage projects.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-16.1-26. Reassessment of benefits. The water resource board may hold at any time, or, upon petition of any affected landowner or political subdivision which has been assessed after a project has been in existence for at least one year, shall hold a hearing for the purpose of determining the benefits of such project to each tract of land affected. At least ten days' notice of the hearing ~~shall~~ must be given by publication in the newspaper or newspapers having general circulation in the district and in the official county newspaper of each county in which the benefited lands are located and by mailing notice thereof by ordinary mail to each owner of land ~~affected by the project~~ whose assessment is proposed to be raised as determined by the records of the register of deeds or county treasurer. The provisions of this chapter governing the original determination of benefits and assessment of costs ~~shall~~ apply to any reassessment of benefits carried out under this section. The board ~~shall~~ may not be forced to make such reassessment more than once every ten years, nor ~~shall~~ may any assessment or balance thereof supporting a project fund be reduced or impaired by reassessment or otherwise so long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest. Costs of maintenance ~~shall~~ must be prorated in accordance with any plan for reassessment of benefits that has been adopted.

SECTION 2. AMENDMENT. Section 61-21-44 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-21-44. Reassessment of benefits. The board may hold at any time, and, upon petition of any affected landowner after a drain has been in existence for at least one year, shall hold a hearing for the purpose of determining the benefits of such drain to each tract of land affected. At least ten days' notice of such hearing ~~shall~~ must be given by publication in a newspaper having general circulation in the county and by mailing notice thereof to each owner of land ~~affected by the drain whose assessment is proposed to be raised as determined by the records of the register of deeds or county treasurer.~~ The provisions of this chapter governing the original determination of benefits and assessment of costs ~~shall~~ apply to any reassessment of benefits carried out under this section. The board ~~shall~~ may not be forced to make such reassessment more than once every ten years, nor ~~shall~~ may any assessment or balance thereof supporting a drainage fund be reduced or impaired by reassessment or otherwise as long as bonds payable out of such fund remain unpaid and moneys are not available in such fund to pay all such bonds in full, with interest.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 754

HOUSE BILL NO. 1260
(Representatives Belter, Dalrymple)
(Senator Nelson)

WATERCOURSE ADJACENT FILL NOTICE

AN ACT to create and enact a new section to chapter 61-16.1 of the North Dakota Century Code, relating to notice of removal or replacement of fill adjacent to a watercourse.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Removal or placement of fill. Prior to removing or placing any fill adjacent to a watercourse, the person responsible shall provide written notice to the district describing the amount and type of fill to be placed or removed and the location of the activity.

For purposes of this section, "adjacent" means within two hundred feet of the bank of the body of water during normal flow or stage. The requirements of this section do not apply to surface coal mining and reclamation operations for which a permit has been secured from the public service commission pursuant to chapter 38-14.1.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 755

SENATE BILL NO. 2092
(Committee on Political Subdivisions)
(At the request of the State Engineer)

COUNTY REVETMENT WORK CONSTRUCTION

AN ACT to repeal chapter 61-19 of the North Dakota Century Code, relating to the construction of revetment works by the county commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 61-19 of the North Dakota Century Code is hereby repealed.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 756

HOUSE BILL NO. 1392
(Representatives Urlacher, Goetz, Wald)
(Senators Krauter, Maixner)

SOUTHWEST PIPELINE SYSTEM CONSOLIDATION

AN ACT to create and enact a new section to chapter 61-24.3 of the North Dakota Century Code, relating to the distribution of water through the southwest pipeline project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 61-24.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

Water distribution lines. Notwithstanding the plans and specifications of state water commission project No. 1736, as authorized in this chapter, the state water commission is hereby authorized to investigate the integration of rural water delivery into the southwest pipeline project, state water commission project No. 1736. If the commission determines that construction cost savings, operation and maintenance cost savings, operation efficiencies, and other advantages can be realized by incorporating water supply, distribution, and delivery into one entire system, and that such benefits and advantages outweigh any additional costs or disadvantages, the commission shall plan, design, integrate, incorporate, construct, operate, and maintain the southwest pipeline project and rural water delivery as one system. The exercise of this authority must be in the manner and time as the commission may deem appropriate.

Approved March 21, 1989
Filed March 23, 1989

CHAPTER 757

SENATE BILL NO. 2107
(Committee on Natural Resources)
(At the request of the State Department of
Health and Consolidated Laboratories)

WATER POLLUTION RESPONSIBILITY

AN ACT to amend and reenact subsection 5 of section 61-28-02 of the North Dakota Century Code, relating to the definition of person in control, prevention, and abatement of pollution of surface waters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 61-28-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Person" means the state or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association, any agency or instrumentality of the United States government, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation.

Approved March 17, 1989
Filed March 17, 1989

CHAPTER 758

SENATE BILL NO. 2167
(Committee on Natural Resources)
(At the request of the State Engineer)

WASTE DISPOSAL SYSTEM APPROVAL

AN ACT to amend and reenact subsection 9 of section 61-28-04 and subsection 2 of section 61-28-06 of the North Dakota Century Code, relating to submission of information concerning disposal systems to the state water commission and permits for disposal systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 61-28-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. To require the prior submission of plans, specifications, and other data relative to, and to inspect the construction of, disposal systems or any part thereof in connection with the issuance of approvals as are required by this chapter ~~and to submit such plans, specifications, and data to the state water commission for its information and advice.~~

SECTION 2. AMENDMENT. Subsection 2 of section 61-28-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. It shall be unlawful for any person to carry on any of the following activities unless he holds a valid permit for the disposal of all wastes which are, or may be, discharged thereby into the waters of the state:
 - a. The construction, installation, modification, or operation of any disposal system or part thereof or any extension or addition thereto without plans and specifications previously approved by the department ~~and the state water commission.~~
 - b. Cause a material increase in volume or strength of any wastes in excess of the permissive discharges specified under existing approved plans.
 - c. The construction, installation, or operation of any industrial, commercial, or other establishment or any extension or modification or addition thereof, the operation of which would cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, or biological properties of any waters of the state in any manner not already lawfully authorized.
 - d. The construction or use of any new outlet for the discharge of any wastes into the waters of the state.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 759

SENATE BILL NO. 2095
(Committee on Appropriations)
(At the request of the State Department of
Health and Consolidated Laboratories)

WASTEWATER FACILITY FUNDING

AN ACT to authorize the state department of health and consolidated laboratories to apply for and accept certain grants for the planning, design, construction, and rehabilitation of wastewater treatment facilities, to provide for matching funds, to require that money received through such grants and state matching funds be deposited into the water pollution control revolving loan fund, and to provide for the use, capitalization, investment, and disposition of the funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

Water pollution control revolving loan fund program - Purposes -
Establishment - Capitalization of fund - Disposition of moneys -
Administration.

1. It is the determination of the legislative assembly that the federal funds for the administration and implementation of the federal wastewater construction grants program will decline within the years to come, thereby decreasing the amount of funds that the state will have to operate and carry out the functions that it has been assigned to accomplish. In order to continue to provide funds to political subdivisions for the planning, design, construction, and rehabilitation of wastewater treatment facilities, and other lawful activities connected with this program, it is the purpose of this section to provide for the establishment of a revolving loan fund to be capitalized by federal grants, matching state funds when required, and by any other funds generated by the operation of the revolving loan fund.
2. There is hereby established a fund to be known as the water pollution control revolving loan fund, hereafter referred to as the "revolving loan fund", which must be maintained and operated by the state department of health and consolidated laboratories. Grants from the federal government or its agencies allotted to the state for the capitalization of the revolving loan fund, and state matching funds when required, must be deposited directly in the revolving loan fund in compliance with the terms of the federal grant. Money in the revolving loan fund must be expended in a manner consistent with terms and conditions of the grants received by the state and may be used to offer loan guarantees; to provide payments to reduce interest on loans and loan guarantees; to make bond interest subsidies; to provide bond guarantees on behalf of municipalities, other local political subdivisions, and intermunicipal or interstate agencies; to provide assistance to a

municipality, other local political subdivisions, or intermunicipal or interstate agencies with respect to the nonfederal share of the costs of a project; to finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works; to provide financial assistance for the construction and rehabilitation of a project on the state priority list; to secure principal and interest on bonds issued by a public trust having the state of North Dakota as its beneficiary, or the North Dakota municipal bond bank if the proceeds of such bonds are deposited in the revolving loan fund and to the extent provided in the terms of the federal grant; to provide for loan guarantees for similar revolving funds established by municipalities, other local political subdivisions, or intermunicipal agencies; to purchase debt incurred by municipalities or other local political subdivisions for wastewater treatment projects; to improve credit market access by guaranteeing or purchasing insurance or other credit enhancement devices for local obligations or obligations of a public trust having the state of North Dakota as its beneficiary or the North Dakota municipal bond bank; to fund other programs which the federal government authorizes by the terms of its grants; to fund the administrative expenses of the state department of health and consolidated laboratories associated with the revolving loan fund; and to provide for any other expenditure consistent with the federal grant program and state law. Money not currently needed for the operation of the revolving loan fund or otherwise dedicated may be invested. All interest earned on investments must be credited to the revolving loan fund.

3. The revolving loan fund must be administered by the state department of health and consolidated laboratories, which is authorized to enter into contracts and other agreements in connection with the operation of the revolving loan fund, including contracts and agreements with federal agencies, political subdivisions, public trusts having the state of North Dakota as beneficiary or the North Dakota municipal bond bank, and other parties to the extent necessary or convenient for the implementation of the revolving loan fund program. The state department of health and consolidated laboratories shall maintain full authority for the operation of the revolving loan fund in accordance with applicable federal and state law.
4. The state department of health and consolidated laboratories has the following powers and duties in regard to the revolving loan fund.
 - a. To apply for and accept grants of money from the United States environmental protection agency or other federal agencies for the purpose of making funds available to political subdivisions for the planning, design, construction, and rehabilitation of wastewater treatment facilities and other related activities. The department may contract to receive such grants, agree to match the grant in whole or in part when required, and to comply with applicable federal laws and regulations in order to secure the grants. Money received through these grants and state matching funds must be deposited into the water pollution

control revolving loan fund or used for appropriate administrative purposes.

- b. To administer the revolving loan fund as established. The office is also authorized to enter into contracts and other agreements in connection with the operation of the revolving loan fund to the extent necessary or convenient for the implementation of the revolving loan fund program.
- c. To administer and disburse funds in accordance with the federal Clean Water Act, as amended.
- d. To promulgate rules as necessary to carry out the provisions of this chapter and meet the requirements of the federal Clean Water Act, as amended.

Approved March 28, 1989

Filed March 28, 1989

CHAPTER 760

HOUSE BILL NO. 1274
(R. Anderson)

LITTLE MISSOURI RIVER COMMISSION

AN ACT to amend and reenact section 61-29-04 of the North Dakota Century Code, relating to the Little Missouri River commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-29-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-29-04. Administration. This chapter shall be administered by a Little Missouri River commission composed of the director of the state parks and recreation department, the state health officer of the state department of health and consolidated laboratories, the chief engineer of the state water commission, or their designated representatives, and one member from each of the following counties: McKenzie, Billings, Slope, Golden Valley, Dunn, and Bowman. The commission members representing the above-mentioned counties shall be appointed by their respective boards of county commissioners and shall serve without compensation except that each appointing board of county commissioners may reimburse its county representative for actual and necessary mileage to and from meetings of the commission at the same rate as state officers. The county representatives appointed shall be resident landowners who live adjacent to the Little Missouri River with the exception of the Golden Valley county representative. A county representative unable to attend a meeting of the commission may be represented by a person who has a written proxy from the representative authorizing that person to act and vote for the representative. The proxy must be a resident landowner of the county that the proxy is representing, but need not live adjacent to the Little Missouri River. The county members shall serve terms of office as follows: Two members shall serve one-year terms, two members shall serve two-year terms, and two members shall serve three-year terms.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 761

HOUSE BILL NO. 1130
(Committee on Agriculture)
(At the request of the Commissioner of Agriculture)

STATE WATERBANK FUND

AN ACT to amend and reenact section 61-31-10 of the North Dakota Century Code, relating to receipt of funds for the waterbank program and appropriating waterbank funds; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-31-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-31-10. Authorization for receipt of funds - Continuing appropriation. The commissioner shall be authorized to receive funds for this program from any private or public source, and shall also be authorized to receive any funds from any North Dakota state agency, which have been specifically authorized for that purpose by the legislative assembly. The commissioner shall work with the governor, game and fish commissioner, United States fish and wildlife service, nonprofit conservation organizations, and any other public official or private organization or citizen to develop a source sources of funding to implement this chapter. All funds received from any source, not including state revenues, are hereby appropriated to the commissioner, and may be expended for the purpose of implementing this chapter upon approval of the emergency commission.

All funds received by the commissioner from any private or public source and from any North Dakota state agency as well as all funds appropriated by the legislative assembly for implementing this chapter shall be transferred to a special fund in the state treasury, which is hereby created, to be known as the state waterbank fund. The state waterbank fund and interest earned thereon is hereby appropriated as a standing and continuing appropriation solely for the purpose of implementing this chapter, including payment of money due upon waterbank agreements entered under this chapter.

SECTION 2. APPROPRIATION. There is hereby appropriated, out of any moneys in the general fund in the state treasury, not otherwise appropriated, to the commissioner of agriculture, as a standing and continuing appropriation, the amount of \$4,500. Notwithstanding language in section 2 of this Act to the contrary, this appropriation may be used only for payment of money due upon waterbank agreements entered under chapter 61-31. These moneys must be transferred from the general fund to the state waterbank fund. The commissioner of agriculture shall keep a separate accounting of the funds appropriated by this section. Interest earned on this fund may be expended as provided in section 61-31-10, including expenditure for administration of the waterbank program or payment of moneys due on waterbank agreements.

Approved April 10, 1989
Filed April 11, 1989

WEAPONS

CHAPTER 762

SENATE BILL NO. 2105
(Committee on Judiciary)
(At the request of the Attorney General)

FIREARM PROHIBITION DETERMINATIONS

AN ACT to amend and reenact subsections 1 and 2 of section 62.1-02-01 of the North Dakota Century Code, relating to possession of firearms; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsections 1 and 2 of section 62.1-02-01 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years ~~from~~ after the date of conviction or release from incarceration or probation, whichever is the latter.
2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed while using or possessing a firearm or dangerous weapon, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of five years ~~from~~ after the date of conviction or release from incarceration or probation, whichever is the latter.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 12, 1989
Filed April 13, 1989

* NOTE: Section 62.1-02-01 was also amended by section 17 of House Bill No. 1052, chapter 158.

WEEDS

CHAPTER 763

HOUSE BILL NO. 1626
(O. Hanson, Shockman)

COUNTY WEED CONTROL LEVIES

AN ACT to create and enact a new section to chapter 63-01.1 of the North Dakota Century Code, relating to county weed board mill levies for noxious weed control; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 63-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

County weed board - Additional mill levy authority. In addition to the mill levy authority provided in sections 63-01.1-06 and 63-01.1-06.3, the county weed board may, with the approval of a majority of the board of county commissioners, certify annually to the board of county commissioners a tax of one mill on the taxable valuation of all taxable property in the county to carry out the provisions of this chapter. The tax may be levied in excess of the mill levy limit prescribed by law for general purposes.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$40,000, or so much thereof as may be necessary, to the commissioner of agriculture for the purpose of eradicating and controlling noxious weeds for the biennium beginning July 1, 1989, and ending June 30, 1991.

Approved April 28, 1989
Filed April 28, 1989

WEIGHTS, MEASURES, AND GRADES

CHAPTER 764

HOUSE BILL NO. 1212
(Committee on Industry, Business and Labor)
(At the request of the Public Service Commission)

WEIGHTS AND MEASURES

AN ACT to amend and reenact sections 64-02-01, 64-02-02, 64-02-03, 64-02-04, 64-02-05, 64-02-07, 64-02-08, 64-02-09, 64-02-10, 64-02-11, 64-02-12, 64-02-13, 64-02-14, 64-02-15, 64-02-15.1, 64-02-20, 64-03-01, 64-03-02, 64-03-03, 64-03-06, 64-03-07, 64-03-09, 64-03-10, 64-03-11, 64-03-12, 64-04-01, 64-04-02, 64-04-03, 64-04-04, and 64-04-05 of the North Dakota Century Code, relating to weights and measures; and to repeal sections 64-02-05.1, 64-02-06, 64-02-19, and 64-03-05 of the North Dakota Century Code, relating to weights and measures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 64-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-01. Definitions. In this title, ~~unless the context or subject matter otherwise requires:~~

1. "Calibrate" means to compare a standard, or weighing or measuring device, to another standard and eliminate by adjustment any variation in the accuracy of the item being compared, but does not include the field repair of a weighing or measuring device.
2. "Commission" shall mean means the public service commission.
2. "Department" shall mean the department of weights and measures under the public service commission.
3. "Gasoline pump" shall include any pump, meter, or similar device used for measuring gasoline, kerosene, fuel oil or other liquid fuel for sale. "Test" means to measure to determine if a standard, or weighing or measuring device, is within the permitted tolerance.
4. "Person" shall import both the singular and the plural, as the case demands, and shall include individuals, partnerships, stock companies, or the agents or employees thereof. "Weighing or measuring device" means any scale, weight, measure, instrument, or device used or offered for use for weighing or measuring in commerce.
5. "Public scale" shall include any scale or weighing device for the use of which a charge is made or compensation is derived.

SECTION 2. AMENDMENT. Section 64-02-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-02. Weights and measures - Supervision by public service commission - Installation of scales under special permit. All ~~weights, weighing or measuring devices, gasoline pumps, and measures~~ in this state shall be supervised and controlled by the commission. ~~Special permits~~ Permits for the installation or relocation of scales, ~~including pitless scales,~~ deviating from specific requirements under this chapter may be issued by the department where it can be demonstrated that commission when the scale meets service requirements within accepted tolerances. Applications for a permit authorizing deviations ~~shall~~ must include ~~full and detailed complete~~ construction plans ~~together with and~~ a statement setting forth of the specific reasons why such deviations are necessary or desirable. The ~~department~~ commission may impose such limitations or conditions on the construction and use of such scales as it may consider necessary.

SECTION 3. AMENDMENT. Section 64-02-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-03. Commission ~~shall prescribe rules and regulations. The commission shall prescribe, may adopt, amend, and modify rules, regulations, and schedules, as may be deemed necessary. Any rules, regulations, and schedules so prescribed and adopted shall have~~ having the force and effect of law.

SECTION 4. AMENDMENT. Section 64-02-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-04. Shrinkage and scale variance Tolerance - Uniformity established by commission. The commission shall establish uniform tolerance or reasonable variances to take care of unavoidable shrinkage or of scale variances in the handling or for weighing of any commodity and measuring devices.

SECTION 5. AMENDMENT. Section 64-02-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-05. Director and other employees - Employment Employees - Compensation. The commission shall appoint and fix the compensation of a director of weights and measures who shall be the head of the department and shall hold his office for a term of two years or until his successor is appointed and qualified and shall be removed for cause only. The commission shall employ such expert scalemen or other and fix the compensation of employees as may be necessary to carry out the provisions of this title and shall fix their compensation.

SECTION 6. AMENDMENT. Section 64-02-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-07. Duties of director commission. The director commission shall:

1. Maintain in such the calibration as prescribed by of the national bureau of standards, state weights and measures standards that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the national bureau of standards of weights and measures. All secondary standards may shall be prescribed calibrated by the

~~director and shall be verified upon their initial receipt, and commission as often thereafter as deemed necessary by the director.~~

2. Keep a seal ~~so formed as to impress the letters "N.D." and the date of sealing upon the weights and measures weighing or measuring devices that are sealed.~~
3. Test, correct, and seal, when found to be accurate, all the copies of the standards used ~~throughout in the state for the purpose of testing the weighing or measuring apparatus devices used in the state, and keep a record thereof.~~
4. Have general supervision of the ~~weights, measures, and weighing or weighing or measuring devices, and instruments or apparatus used as standards in the state.~~
5. Upon the written request of any person, test or calibrate ~~weights, measures, weighing or measuring devices, and instruments or apparatus used as standards in the state.~~
6. Keep a complete record of the standards, ~~balances weighing or measuring devices, and all testing and sealing apparatus equipment owned by the state, and maintain traceability of the state standards to the national bureau of United States standards.~~
7. ~~Make reports to the commission of his activities in such manner and at such time as the commission may require.~~

SECTION 7. AMENDMENT. Section 64-02-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-08. Purchase, lease, or disposal of ~~apparatus and equipment by director. The director, with the approval of the commission, shall purchase or lease any apparatus or equipment necessary for carrying out the provisions of this title and may sell any and all standards of weights and measures, balances, testing apparatus, and sealing equipment which may come into his custody and possession in the performance of his duties imposed by this title; whenever he, with the approval of the commission, shall determine that any of such standards of weights and measures, balances, testing apparatus, and sealing equipment are is obsolete or unsuitable for the performance of the duties imposed upon the director. Any moneys derived by the commission Proceeds from any sale or disposal shall be paid into the general fund of the state treasury.~~

SECTION 8. AMENDMENT. Section 64-02-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-09. Standards of weights and measures. The ~~director of weights and measures commission shall keep and maintain in his office the following standards of weights and measures, which shall must conform to the United States standards of weights and measures:~~

1. One bushel.
2. One-half bushel.
3. One peck.

4. One-half peck.
5. One quart.
6. One wine gallon.
7. One wine half-gallon.
8. One wine quart.
9. One wine pint.
10. One wine gill.
11. One surveyor's chain, thirty-three standard feet in length.
12. One yard measure.
13. One foot measure.
14. One inch measure.
15. One one hundred pound weight.
16. One fifty pound weight.
17. One twenty-five pound weight.
18. One ten pound weight.
19. One one pound weight.
20. One half-pound weight.
21. One quarter-pound weight.
22. One one-eighth of a pound weight.
23. One one-sixteenth of a pound weight or one ounce weight.
24. One set of apothecaries' weights from one pound to one grain and one set of troy weights from one pound to one grain.
25. ~~Such other scales, beams, and balances as shall be~~ Other weighing and measuring devices necessary to test ~~other weights by these~~ and calibrate standards.

~~Measures, weights, scales, beams, and balances~~ These standards are declared to be the legal standards of weights and measures for this state, and shall must be used only for testing the copies thereof secondary standards used in testing to test weighing and or measuring devices. The measures mentioned in subsections 1 through 10, shall be made of copper or other suitable and substantial material. The department shall keep a record of all county weights, measures, beams, and balances marked and tested by its employees.

SECTION 9. AMENDMENT. Section 64-02-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-10. Fee schedule for inspection of Fees to test or calibrate weighing and measuring devices. The director or other employee of the department of weights and measures commission shall charge and collect the following fees in accordance with the following schedule to:

1. For inspecting Test railroad track scales scale \$80.00
2. For inspecting Test livestock and or vehicle scales scale eight thousand pounds [3628.74 kilograms] capacity and under 35.00
3. For inspecting Test livestock and vehicle scales scale over eight thousand pounds [3628.74 kilograms] capacity 80.00
4. For inspecting Test livestock scales scale under the jurisdiction of Packers and Stockers Act of the federal department of agriculture 80.00
5. For inspecting Test livestock scales scale under the jurisdiction of Packers and Stockers Act of the federal department of agriculture, where in the discretion of the director of weights and measures or his employee, if the sales ring or buying station scale owner transports to the scale and furnishes all test weights and manpower needed to properly test the scale 45.00
6. For inspecting Test auxiliary beam on livestock, motor truck, motor truck dump scales scale 15.00
7. For inspecting Test road construction truck scales scale 80.00
8. For inspection of Test road construction hopper scales scale, six thousand and one pounds [2722.01 kilograms] capacity and over 35.00
9. For inspecting Test overhead track scales, hopper scales, dormant scales, and hanging scales scale six thousand pounds [2721.55 kilograms] capacity and over 35.00
- For inspecting Test overhead track scales, dormant scales, hanging scales, and hopper scales scale five thousand nine hundred ninety-nine pounds [2721.10 kilograms] and less capacity, each 20.00
10. For inspecting Test movable platform scales scale 6.00

11. For inspecting all Test counter
and or computing scales scale 6.00
12. For inspecting Test every patent
balance, beam steel yard, or
other instrument used
for weighing other than
the above ~~enumerated~~, each 6.00
13. For inspecting any Test two-bushel
[70.48-liter] or
one-bushel [35.24-liter]
measure 6.00
14. For inspecting any Test other dry
measure, each 6.00
15. For inspecting any Test board of
cloth measure, each 6.00
16. For inspecting any Test liquid
measure or computing pump 6.00
17. For each inspection of any Test
liquid measure or computing pump
in addition to the regularly
scheduled annual inspection,
including inspections made for
new equipment which replaces
a rejected measuring device 6.00
18. For inspecting Test liquid
measures of five gallons
[18.93 liters] or
less capacity, each 6.00
19. For inspecting Test mobile delivery gasoline and
fuel oil meters meter 15.00
20. For inspecting Test gasoline and or
fuel oil meters meter on common carrier
pipelines, and or any other
meters meter used in loading
railway cars, transports,
or other conveyances 35.00
21. For inspecting Test propane and or
liquid fertilizer meters meter 25.00
22. For calibrating Test truck tanks tank
of one thousand gallons
[3785.41 liters]
capacity and under 30.00
- Truck tanks Test truck tank between one
thousand and one gallons
[3789.10 liters]
and six thousand gallons
[22,712.47 liters] 40.00
- Truck tanks Test truck tank above
six thousand gallons
[22,712.47 liters] 50.00
23. For inspection of Crane
scales Test crane scale six thousand pounds
[2721.55 kilograms]
and less capacity, each 30.00
- For inspection of Crane scales Test crane scale
six thousand and one pounds
[2722.01 kilograms]

capacity and over, each	50.00
24. <u>Test or calibrate weighing and measuring devices other than the above and those set by rule, per inspector per quarter hour or fraction thereof</u>	7.50

Where ~~When~~ a rejected weighing ~~and~~ or measuring device has been reconditioned or replaced by new equipment, ~~the same~~ it must be reinspected ~~retested~~ and ~~a certificate issued~~ certified before being put into use, ~~and except as otherwise provided above, the by rule.~~ The fee charged for such reinspection ~~retest~~ and certification ~~shall be~~ is the same as for the first inspection test and certification. When the director or other employee of the department of weights and measures finds any of the instruments or articles used in weighing or measuring to be out of allowable tolerance set by the commission, the director or other employee shall inform the owner or operator that his weighing or measuring equipment is out of tolerance and to instruct him that a competent serviceman is to be called to service the device and bring said device to allowable tolerance.

Whenever a special inspection ~~When a test of any a weighing or measuring device is required, in addition to the regularly scheduled annual inspection made by the department test,~~ a charge of fifty cents per mile [1.61 kilometers] will be made unless the motor vehicle, including the testing equipment necessary to perform such special inspection, the test weighs less than ten thousand pounds [4535.92 kilograms] gross. If the motor vehicle weighs less than ten thousand pounds [4535.92 kilograms] gross, a charge of twenty-five cents per mile [1.61 kilometers] will be made, and all such mileage charges ~~shall be~~ are in addition to the regular inspection test fee to cover the costs of the additional travel ~~by the director or employee occasioned by such special inspection.~~ Where a special inspection test has been requested and the person requesting such special inspection it fails to appear at the arranged hour, or fails to have the weighing or measuring device in readiness ready for inspection ~~or for repair or maintenance work testing at the arranged hour time,~~ there ~~shall be~~ is a charge of thirty seven dollars and fifty cents a quarter hour for the time interval between the arranged hour time and the hour time at which the inspection test can be commenced begin.

SECTION 10. AMENDMENT. Section 64-02-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-11. Payment of service test fee before using weighing or measuring device. No ~~scale, weight, measure,~~ or weighing or measuring device that has been sealed by ~~any one of the employees of the department shall~~ commission may be used, sold, or exposed for sale until the fee charged for the service test has been paid.

SECTION 11. AMENDMENT. Section 64-02-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-12. Fees collected - Paid into state treasury. All fees and charges collected by the commission under ~~the provisions of~~ section 64-02-10 shall be paid into the general fund of the state treasury.

SECTION 12. AMENDMENT. Section 64-02-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-13. Employees of department Commission to test weights and weighing or measuring devices annually. The director or any other employee of the department commission may test:-

- 1- Any scale, weight, beam, or measure of any kind;
- 2- Any instrument or mechanical device for measurement; or
- 3- Any tool, appliance, or accessory connected with any instrument for measuring;

if the same is kept, offered, used, or employed, or is offered for sale or sold for the purpose of being used or employed, by any person in determining the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption which may be offered or submitted by any person for sale, hire, or reward or calibrate weighing or measuring devices annually. The owner of any weight, measure, or any other apparatus, hereinbefore described, weighing or measuring device used in this state is responsible for the its accuracy and condition of the same, and is required to shall have the same inspected it tested at least once each year annually. If upon inspection testing the said weight, measure, or other apparatus shall correspond with the standards in the possession of the department weighing or measuring device is within the permitted tolerance, it shall be sealed with the proper device to be approved by the director or employee except that inspections. Inspections and testing of farm milk bulk tank equipment shall be made only by the state dairy department as provided in under section 4-30-18. Upon receipt of a If upon complaint, the director shall cause such equipment to be tested and inspected within a reasonable period of time, and in the case where, as a result of such testing and inspection, the equipment is determined to be in accordance with the standards in the possession of the department commission finds the weighing or measuring device is within the permitted tolerance, the cost of such inspection and testing the test shall be paid by the complainant; and in all other cases the cost of such testing and inspection testing shall be paid by the owner of the equipment.

SECTION 13. AMENDMENT. Section 64-02-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-14. Incorrect weighing or measuring devices - Power to seize, condemn, and destroy. The director or any other employee of the department commission shall condemn, seize, or destroy any incorrect weight, measure, or weighing or measuring device which in his judgment cannot be satisfactorily repaired. Those weighing or measuring devices which are incorrect but which are capable of being repaired shall be marked as "condemned for repair" in the manner to be prescribed set by the director commission. The owner or user of any scale, weight, measure, or a weighing or measuring instrument device which has been so marked shall have the same it repaired or corrected within thirty days, and such the device shall may not be used or disposed of in any way without the consent of the director commission.

SECTION 14. AMENDMENT. Section 64-02-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-15. Vendor's and peddler's measuring and weighing apparatus subject to test weighing or measuring device. The director or any other employee of the department commission may enter into or upon any land, place,

~~building, or premises to stop any vendor, peddler, or junk dealer, or the driver of any coal wagon, ice wagon, or delivery vehicle, or any dealer whatsoever, and require him, if necessary, to proceed to some place which the director or employee of the department commission may specify for the purpose of making a proper test of the weighing apparatus or measuring devices used by such the vendor, driver, or dealer.~~

SECTION 15. AMENDMENT. Section 64-02-15.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-15.1. Duty of department commission to test accuracy of oil and gas production meters. The department commission shall randomly test and certify the accuracy of meters used to measure oil and gas production under section 38-08-20. The owner of the well shall contract for the testing of all meters with an independent contractor or may employ a qualified meter specialist approved by the department commission. The owner of the well shall repair or replace any meter that has a variance in excess of department standards the permitted tolerance. The department commission shall, in accordance with chapter 28-32, determine set the fee to be charged by the department commission for testing meters. All fees collected under this section must be paid to the general fund in the state treasury.

SECTION 16. AMENDMENT. Section 64-02-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-02-20. ~~Departmental expenses~~ Expenses. The commission may purchase supplies and equipment and may incur necessary expenses in carrying out the provisions of this title within legislative appropriations made for such purpose. Traveling expenses ~~shall be~~ are allowed the director and other employees ~~of the department~~ as provided in section 54-06-10.

SECTION 17. AMENDMENT. Section 64-03-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-03-01. False weights and measures. It ~~shall be~~ is unlawful for any person to:

1. Offer or expose for sale, sell, use, or ~~have in his possession~~ possess a false ~~scale, weight, measure, or~~ weighing or measuring device, for use in buying or selling any commodity or thing, or any ~~weight, measure, or~~ weighing or measuring device which has not been sealed as provided by section 64-02-13.
2. Dispose of any condemned ~~weight, measure, or~~ weighing or measuring device, or remove any tag placed thereon by ~~any authorized employee of the department commission~~.
3. Sell, offer, or expose for sale less than the quantity represented.
4. Sell, offer for sale, or ~~have in his possession~~ possess for the purpose of selling, any device or instrument to be used or calculated designed to falsify any weight or measure weighing or measuring device.
5. Refuse to pay any fee charged for testing or calibrating and sealing or condemning any ~~scale, weight, measure, or~~ weighing or measuring device.

SECTION 18. AMENDMENT. Section 64-03-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-03-02. False weights - Unlawful for public use. It ~~shall be~~ is unlawful for any person to knowingly and fraudulently ~~make use of a weight, measure, scale, balance, or beam for the purpose of purchase or sale weighing or measuring device, or to keep such a device for public use, which does not conform to the legal standard of weights and measures of the state, or to alter a weight, measure, scale, balance, or beam weighing or measuring device~~ after it has been adjusted tested or calibrated and sealed so that it does not conform to such the standard.

SECTION 19. AMENDMENT. Section 64-03-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-03-03. Fraudulently increasing weight. It ~~shall be~~ is unlawful for any person to place or conceal in any bag, bale, box, barrel, or other package containing with any goods usually sold by weight any foreign substance for the purpose of increasing the apparent weight of such container or package the goods.

SECTION 20. AMENDMENT. Section 64-03-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-03-06. Stamping false incorrect weight or tare. It ~~shall be~~ is unlawful for any person to knowingly mark or stamp false or short an incorrect weight or false tare on any cask or package, or to knowingly sell or offer for sale any cask or package so marked.

SECTION 21. AMENDMENT. Section 64-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-03-07. Violation of provisions relating to standard measurements and weights unlawful. It ~~shall be~~ is unlawful for any person buyer to, in buying, take any a greater number of pounds or cubic feet to the bushel, barrel, ton, cord, gallon, or fractional part, as the case may be, quantity than is provided by the standards established in this title, or any seller to, in selling, give any less number a lesser quantity, unless both parties to the sale have actual knowledge of the variation from the standards as established in this title.

SECTION 22. AMENDMENT. Section 64-03-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-03-09. General penalty. Any person who ~~shall violate~~ violates any of the provisions of this title ~~wherein~~ for which a specific penalty has not been provided ~~shall be~~ is guilty of a class B misdemeanor.

SECTION 23. AMENDMENT. Section 64-03-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-03-10. Duty of officer to seize persons violating provisions relating to false weights and measures weighing and measuring devices. ~~When an~~ An officer ~~shall arrest~~ arresting any person for a violation of any provision of this title, he shall seize any false weight or measure found weighing or measuring device in the possession of the person so arrested and

shall deliver ~~the same~~ it to the magistrate before whom the person ~~so~~ arrested is required to be taken.

SECTION 24. AMENDMENT. Section 64-03-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-03-11. Duty of state's attorney. ~~Upon~~ After the conviction of any person for violating any provision of this title, the state's attorney shall cause to be destroyed any weight or measure in respect whereof the accused stands convicted and which remains in the possession or under the control of such state's attorney ~~false weighing or measuring device involved in the violation.~~

SECTION 25. AMENDMENT. Section 64-03-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-03-12. Duty of magistrate. The magistrate to whom any weight or measure weighing or measuring device is delivered, pursuant to under section 64-03-10, shall request an inspector of the department ~~commission~~ to test the same it, and if he finds it found to be false, the inspector shall cause it to be destroyed or to be delivered the commission shall destroy it or deliver it to the state's attorney of the county in which the accused is subject to prosecution or trial, as the interests of justice in his judgment may require prosecuted.

SECTION 26. AMENDMENT. Section 64-04-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-04-01. Restrictions upon sale of liquefied petroleum gas. It ~~shall be is~~ unlawful to sell or offer for sale, either at wholesale or retail, any liquefied petroleum gas, either in liquid or vapor form, except by avoirdupois weight, specified in pounds; liquid measure, specified in gallons; vapor measure, specified in cubic feet; or specified in such other units as may be approved by the department of weights and measures of the public service commission.

SECTION 27. AMENDMENT. Section 64-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-04-02. Authority of department of weights and measures ~~commission~~ to test and condemn weighing and measuring devices. The department of weights and measures shall be authorized to commission may test all or calibrate weighing and measuring devices used in the retail sale of liquefied petroleum gas, either in liquid or vapor form, and shall condemn all such devices which are found not to be inaccurate within the permitted tolerance or which do not clearly state the quantity of liquefied petroleum gas, either in liquid or vapor form, in pounds, gallons, cubic feet, or other units approved by the department of weights and measures commission. The department commission shall conspicuously mark all condemned devices, which mark shall may not be removed or defaced except upon authorization of the said department of weights and measures or its authorized representative commission.

SECTION 28. AMENDMENT. Section 64-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-04-03. Specification of liquid gas meters. All liquid gas meters ~~shall~~ must be of a positive displacement type equipped with a vapor separator or provided with ~~such~~ other equipment which will positively eliminate all air and vapor from passing through the meter with the liquid gas, and a differential pressure regulator ~~and such~~. The meters ~~shall~~ must be corrected, prior to use, to sixty degrees Fahrenheit [15.5 degrees Celsius] liquid gas temperature and all deliveries of liquid gas through such meters ~~shall~~ must, at the time and place of ~~such~~ delivery, be temperature corrected to sixty degrees Fahrenheit [15.5 degrees Celsius] ~~to the temperature of the liquid gas at the time and place of delivery~~ and the customer ~~shall~~ be billed accordingly. It ~~shall~~ be is unlawful to make retail sales to customers except where delivered through a fuel dispenser from any bulk delivery vehicle unless such bulk delivery vehicle is equipped with and dispenses said liquid petroleum gas through a liquid meter as herein provided. Liquid meters ~~shall~~ may not be equipped with a bypass around ~~said the liquid meter provided; however, that the~~. The prohibition of a bypass is ~~does~~ not ~~intended~~ to prohibit the use of an equalization line.

SECTION 29. AMENDMENT. Section 64-04-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-04-04. Commission ~~may formulate regulations~~ rules - Tolerances. The ~~public service~~ commission ~~is hereby authorized to promulgate and may adopt such rules and regulations~~ and establish tolerances within a maximum of two percent; ~~plus or minus, which may be necessary for the enforcement of this chapter~~ having the force or effect of the law.

SECTION 30. AMENDMENT. Section 64-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

64-04-05. Penalty. Any person who violates any of the provisions of this chapter ~~or fails to comply with its requirements or any of the commission rules and regulations issued hereunder~~ ~~shall be deemed~~ is guilty of a class B misdemeanor.

SECTION 31. REPEAL. Sections 64-02-05.1, 64-02-06, 64-02-19, and 64-03-05 of the North Dakota Century Code are hereby repealed.

Approved March 29, 1989
Filed March 30, 1989

WORKERS COMPENSATION

CHAPTER 765

SENATE BILL NO. 2256
(Committee on Industry, Business and Labor)
(At the request of the Workers Compensation Bureau)

WORKERS COMPENSATION AWARDS AND BENEFITS

AN ACT to amend and reenact sections 65-01-02, 65-05-02, 65-05-03, 65-05-12, 65-05-13, 65-05-28, and subsection 2 of section 65-13-10 of the North Dakota Century Code, relating to definitions, unusual stress for mental injury claims, impairment, disability, medical services and impairment awards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 65-01-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-01-02. Definitions. Whenever used in this title:

1. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
2. "Artificial members" includes only such devices as are substitutes for, and not mere aids to, a natural part, organ, limb, or other part of the body. Eyeglasses or contact lenses are not artificial members unless the eye is, or eyes are, injured as a result of a compensable injury, and such injury causes a change in sight which requires fitting of eyeglasses or contact lenses not previously worn by the injured worker, or requires a change in existing prescription.
3. "Artificial replacements" means mechanical aids including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury. The term does not include:
 - a. Personal items that are for the injured employee's personal use or hygiene, including hand massages, toothbrushes, slippers, shampoo, and soap;
 - b. Any product or item such as clothing or footwear unless the items are considered orthopedic devices and are prescribed by the treating doctor or health care provider;
 - c. All items of furniture except hospital beds, shower stools, wheelchairs, or whirlpools if prescribed by the treating doctor or health care provider;
 - d. Vitamins and food supplements except in those cases where the injury causes severe dietary problems, where the injury results

* NOTE: Section 65-01-02 was also amended by section 74 of Senate Bill No. 2056, chapter 69, and section 4 of Senate Bill No. 2324, chapter 295.

- in the employee's paraplegia or quadriplegia, or where the employee becomes wheelchair-bound due to the injury;
- e. Eye exams unless there is a reasonable potential for injury to the employee's eyes as a result of the injury;
 - f. Home gym or exercise equipment unless the bureau otherwise orders;
 - g. Memberships or monthly dues to health clubs, unless the bureau orders otherwise;
 - h. Private hospital or nursing home rooms except in cases of extreme medical necessity, and only when directed by the attending doctor. If the employee desires better accommodations than those ordered by the attending doctor, the difference in cost will be paid by the employee;
 - i. Serological tests (VDRL and RPR) for syphilis or any other venereal disease tests, pregnancy tests, or any other routine tests unless clearly necessitated by the injury; and
 - j. Aids or programs primarily intended to help the employee lose weight or stop smoking.
4. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
- ~~4-~~ 5. "Brother" and "sister" includes a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption, but such terms shall not include a married brother or sister unless he or she actually is dependent.
- ~~5-~~ 6. "Bureau" means the North Dakota workers compensation bureau, or any director, departments heads, assistants, or employees designated by the commissioners, to act within the course and scope of their employment in administering the policies, powers, and duties of this title.
- ~~6-~~ 7. "Child" means a child under eighteen years of age residing in the employee's household or to whom the employee has a legal obligation of support; or a child eighteen years of age or over and physically or mentally incapable of self-support who is actually dependent upon the employee for support; or any child between eighteen and twenty-two years of age who is enrolled as a full-time student in any accredited educational institution who is actually dependent upon the employee for support. This term includes a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child, but shall not include a married child unless actually dependent.
- ~~7-~~ 8. "Compensable injury" means an injury by accident arising out of and in the course of employment including an injury caused by the willful act of a third person directed against an employee because of his employment; but such term shall not include an injury caused

by the employee's willful intention to injure himself or to injure another; nor any injury received because of the use of narcotics or intoxicants while in the course of the employment. If an injury is due to heart attack or stroke, such heart attack or stroke must be causally related to the worker's employment, with reasonable medical certainty, and must have been precipitated by unusual stress.

a. Such The term "compensable injury", in addition to an injury by accident, includes:

- a- (1) Any disease which can be fairly traceable to the employment. Ordinary diseases of life to which the general public outside of the employment is exposed shall not be compensable except where the disease follows as an incident to, and in its inception is caused by a hazard to which an employee is subjected in the course of his employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease includes impairment and effects from radiation fairly traceable to the employment. It need not have been foreseen or expected, but after it is contracted, it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence. However, preventative treatment for communicable diseases is not compensable under this title.
- b- (2) An injury to artificial members.
- (3) Injuries due to heart attack, stroke, and mental injury precipitated by mental stimulus, which must be causally related to the worker's employment, with reasonable medical certainty, and which must have been precipitated by unusual stress.
- (4) Injuries arising out of employer-required or supplied travel to and from a remote job site or activities performed at the direction or under the control of the employer.
- (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.

b. The term "compensable injury" does not include:

- (1) An injury caused by the employee's willful intention to injure or kill himself, herself, or another, which includes those instances where the injury or aggravation thereof results from the employee's suicide or attempted suicide.
- (2) Any injury caused by the use of narcotics or intoxicants.
- (3) An injury that arises out of an altercation in which the injured employee is the initial physical aggressor.

- (4) An injury that arises out of the commission of an illegal act by the injured employee.
- (5) An injury that arises out of an employee's purely voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
- (6) Injuries attributable to a preexisting injury, disease, or condition which clearly manifested itself prior to the compensable injury. This does not prevent compensation where employment substantially aggravates and acts upon an underlying condition, substantially worsening its severity, or where employment substantially accelerates the progression of an underlying condition. However, it is insufficient to afford compensation under this title solely because the employment acted as a trigger to produce symptoms in a latent and underlying condition if the underlying condition would likely have progressed similarly in the absence of such employment trigger, unless the employment trigger is also deemed a substantial aggravating or accelerating factor. An underlying condition is preexisting injury, disease, or infirmity.
- (7) A nonemployment injury that, although acting upon a prior compensable injury, is established as an independent intervening cause of injury.
- (8) A mental or emotional injury arising principally out of a bona fide personnel action, including a transfer, promotion, demotion, or termination except such action that is the intentional infliction of emotional harm.
- 9. "Date of first disability" and "loss of earnings date" mean the first full date the employee was unable to work in relation to a compensable injury. This term does not apply to recurrent disabilities.
- 10. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
- Ø- 11. "Disability" means inability to work as a result of a compensable injury that period of time an employee is totally or partially incapacitated from:
 - a. Performing employment at any suitable gainful employment or occupation for which the employee is reasonably suited by experience or training;
 - b. Earning in the same or any other employment the wages the employee was receiving at the time of injury.

12. "Doctor" means doctor of medicine, chiropractor, osteopathy, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license.

~~9-~~ 13. "Employee" means every person engaged in a hazardous employment under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, and:

a. Such term includes:

- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city.
- (2) Aliens.
- (3) Poor relief workers except such as are engaged in repaying to counties relief moneys which the counties have been compelled by statute to expend for poor relief.
- (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person may have any claim for relief or right to compensation for any injury to such minor workman, but in the event of the award of a lump sum of compensation to such minor employee, such sum shall be paid only to the legally appointed guardian of such minor.

b. Such term does not include:

- (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of his employer.
- (2) Any person who is engaged in an illegal enterprise or occupation.
- (3) The spouse or child of the employer dwelling in the household of the employer.

c. Persons employed by subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium therefor. This subdivision may not be construed as imposing any liability upon a general contractor other than liability to the bureau for the payment of premiums which are not paid by a subcontractor or independent contractor.

~~10-~~ 14. "Employer" means:

a. The state and all political subdivisions thereof.

- b. All public and quasi-public corporations in this state.
 - c. Every person, partnership, association, and private corporation, including a public service corporation.
 - d. The legal representative of any deceased employer.
 - e. The receiver or trustee of any person, partnership, association, or corporation, having one or more employees as herein defined.
 - f. The president, vice presidents, secretary, or treasurer of a business corporation.
- ~~11-~~ 15. "Employment" means employment by the state and all political subdivisions thereof, by all public and quasi-public corporations therein, and all private employments.
- ~~12-~~ 16. "Fairly traceable to the employment" when used to modify the term "disease" means only a disease which:
- a. Arises under conditions wherein it is apparent to the rational mind upon consideration of all the circumstances that there is a direct causal connection between the conditions under which the work is performed and the disease;
 - b. Can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;
 - c. Can be fairly traced to the employment;
 - d. However, any condition or impairment of health of a full-time paid fireman or law enforcement officer caused by lung or respiratory disease, hypertension, heart disease, or exposure to infectious disease as defined by sections 23-07.3-01 and 23-07.3-02, or occupational cancer in a full-time paid fireman, resulting in total or partial disability or death is presumed to have been suffered in the line of duty. The condition or impairment of health may not be attributed to any disease existing before that total or partial disability or death unless the contrary is shown by competent evidence. As used in this subdivision, an occupational cancer is one which arises out of employment as a full-time paid fireman and is due to injury due to exposure to smoke, fumes, or carcinogenic, poisonous, toxic, or chemical substances while in the performance of active duty as a full-time paid fireman. A full-time paid fireman or law enforcement officer is not eligible for the benefit provided under this subdivision unless that full-time paid fireman or law enforcement officer has completed two years of continuous service and has successfully passed a physical examination which fails to reveal any evidence of such a condition.
17. "Fee schedule" means the relative value scale, conversion factors, fee schedules, and medical aid rules adopted by the bureau.

- ~~13-~~ 18. "Fund" means the North Dakota ~~workmen's~~ workers' compensation fund.
- ~~14-~~ 19. "Grandchild" and the terms defined in subsections 4 and 6 include only a person who, at the time of the death of the deceased employee, is under eighteen years of age, or if over that age, is incapable of self-support.
- ~~15-~~ 20. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
- a. Agricultural or domestic service.
 - b. Any employment of a common carrier by railroad.
 - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
 - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
21. "Health care provider" means a doctor or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of, a doctor.
- ~~15-1-~~ 22. "Orphan" means a child who has no lawful parent.
- ~~16-~~ 23. "Parent" includes a stepparent and a parent by adoption.
- ~~17-~~ 24. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement or recovery, and includes disfigurement resulting from an injury if such disfigurement diminishes the ability of the employee to obtain employment. The loss must be determined in accordance with and based upon the most current edition of the American medical association's "Guides to the Evaluation of Permanent Impairment." Any impairment award, not expressly contemplated within the American medical association's "Guides to the Evaluation of Permanent Impairment," must be determined by clear and convincing medical evidence.
- ~~18-~~ 25. "Premises" means that part of the employer's property upon or in which the employee is expected to perform services for his employer.
26. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. Such services may include vocational evaluation, counseling, education, workplace modification, and vocational retraining including on-the-job training or training for alternative employment with the same employer, and job placement assistance.

- ~~19-~~ 27. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
28. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the bureau to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
- ~~20-~~ 29. "Wages" includes the market value of board, lodging, fuel, and other advantages which can be estimated in money which the employee receives from the employer as a part of his remuneration means all remuneration payable in money or a substitute for money for services rendered by an employee.
- a. The term "wages" includes:
- (1) The actual value of board, lodging, rent, or housing and per diem expenses to be included within the actual wage as remuneration, if such board, lodging, rent, or housing and per diem is lost as a result of the injury.
 - (2) Commissions and bonuses.
 - (3) Extra wages for any and all overtime work.
 - (4) Wages or salary paid during holidays, vacations, or sickness periods.
 - (5) Gratuities received in the course of employment, from others than the employer, only when such gratuities are received with the knowledge of the employer and reported to the internal revenue service.
 - (6) Wages earned from employment at more than one occupation or employer other than the employer at the time of injury, if those wages are lost due to compensable injury.
 - (7) Unemployment insurance benefits and workers' compensation temporary total disability benefits paid to the injured worker during the twelve months preceding the month of injury will be taken into account when computing the average weekly gross earnings in cases where there are special circumstances under which the average gross weekly earnings cannot be determined.
- b. The term "wages" does not include:
- (1) Severance pay.

- (2) The cash value of health, medical, life, or other insurance benefits or retirement benefits.
- (3) Social security benefits.
- (4) Passive investment income such as income from stocks, bonds, trust accounts, or individual retirement accounts.

21- 30. "Weekly wage" "Gross weekly wage" means the computation best calculated to give the weekly earnings of the employee weekly wages the worker was receiving from all employments at the time of injury. The average weekly wage as determined under this section must be rounded to the nearest dollar. In cases where the worker's wages are not fixed by the week, they must be determined in the following manner:

- a. Hourly or daily rate multiplied by number of hours or days worked per seven day week;
- b. Monthly rate multiplied by twelve months and divided by fifty-two weeks;
- c. Biweekly rate divided by two;
- d. If the weekly earnings of an employee cannot be ascertained, the wage for the purposes of calculating compensation must be taken to be the usual wage paid other employees engaged in like or similar occupations where the wages are fixed; or
- e. If there are special circumstances under which the average weekly wages cannot be reasonably and fairly determined by applying subdivisions a through d, an average weekly wage may be computed by dividing the aggregate wages during the twelve months prior to the injury by fifty-two weeks, or the number of weeks actually worked, whichever is less.

22- 31. Any term includes the singular and plural and either or both sexes where the context so requires.

* SECTION 2. AMENDMENT. Section 65-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-02. Form in which claim shall be filed. Every claim shall be made on forms to be furnished by the bureau and shall contain all the information required by it. Each claim shall be signed by the person entitled to compensation or by the person acting on his behalf and, except in case of death, shall be accompanied by a certificate of the employee's ~~physician~~ doctor stating the nature of the injury and the nature and probable extent of the disability. For any reasonable cause shown, the bureau may waive the provisions of this section.

SECTION 3. AMENDMENT. Section 65-05-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-03. Jurisdiction of bureau to hear questions within its jurisdiction - Finality of determination. The bureau shall have full power and authority to hear and determine all questions within its jurisdiction,

* NOTE: Section 65-05-02 was also amended by section 3 of Senate Bill No. 2237, chapter 766.

and its decisions, except as provided in chapter 65-10, shall be final and shall be entitled to the same faith and credit as a judgment of a court of record. During the period of experience rating, before an award for permanent impairment can be made to a claimant, the bureau shall give notification in writing, by registered or certified mail, addressed to the employer of said claimant at his last known address, of their intention to make such award, outlining reasons and amount of such evaluation and giving the employer ten days in which to file a written protest to such award. If such protest is registered by the employer, the bureau shall set a date of hearing to show cause, if any there be, why such award should not be made, and shall notify the employer of the date set, and the bureau shall order an examination of the claimant on or before the date set for the hearing by a duly qualified physician licensed to practice and practicing his profession in the state of North Dakota, designated by the employer.

SECTION 4. AMENDMENT. Section 65-05-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-12. Permanent impairment - Weekly compensation - Time paid. The injured employee's doctor shall report to the bureau any rating of any impairment of function as the result of the injury on the date of maximum medical improvement, except for total losses claimed under section 65-05-13. Any rating of the percentage of functional impairment should be in accordance with the standards for the evaluation of permanent impairment as published in the most recent edition of the American medical association's "Guides to the Evaluation of Permanent Impairment" unless proven otherwise by clear and convincing medical evidence. The doctor's report shall include a clinical report in sufficient detail to support the percentage ratings assigned. Any subsequent award for impairment shall be made minus any previous award given on any earlier claim or the same claim for that same member or body part. If the injury causes permanent impairment, other than scheduled injuries, as elsewhere provided for in this chapter, the percentage which such impairment bears to total impairment shall be determined, and the fund shall pay to the impaired employee a weekly compensation in the sum of sixty dollars per week for the following periods lump sum, calculated by multiplying thirty-three and one-third percent of the average weekly wage in this state rounded to the next highest dollar, on the date the impairment is determined, by the following number of weeks, depending upon the percentage of impairment:

For a one percent impairment	5 weeks.
For a ten percent impairment	50 weeks.
For a twenty percent impairment	100 weeks.
For a thirty percent impairment	150 weeks.
For a forty percent impairment	200 weeks.
For a fifty percent impairment	250 weeks.
For a sixty percent impairment	300 weeks.
For a seventy percent impairment	350 weeks.
For an eighty percent impairment	400 weeks.
For a ninety percent impairment	450 weeks.

SECTION 5. AMENDMENT. Section 65-05-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-13. Scheduled injuries - Permanent loss of member - Weekly compensation - Time compensation payable. If the injury causes the loss of a member, the fund shall pay to the impaired employee a weekly compensation equal to sixty dollars per week for the following periods lump sum,

calculated by multiplying thirty-three and one-third percent of the average weekly wage in this state rounded to the next highest dollar, on the date the impairment is determined, by the following number of weeks, depending upon the percentage of impairment:

1. For loss of arm at shoulder	250 weeks.
2. For loss of arm at or above elbow	220 weeks.
3. For loss of hand at or above wrist	200 weeks.
4. For loss of thumb	65 weeks.
5. For loss of second or distal phalanx of thumb	28 weeks.
6. For loss of first finger	40 weeks.
7. For loss of middle or second phalanx of first finger	28 weeks.
8. For loss of third or distal phalanx of first finger	22 weeks.
9. For loss of second finger	30 weeks.
10. For loss of middle or second phalanx of second finger	22 weeks.
11. For loss of third or distal phalanx of second finger	14 weeks.
12. For loss of third finger	20 weeks.
13. For loss of middle or second phalanx of third finger	16 weeks.
14. For loss of third or distal phalanx of third finger	10 weeks.
15. For loss of fourth finger	16 weeks.
16. For loss of middle or second phalanx of fourth finger	12 weeks.
17. For loss of third or distal phalanx of fourth finger	6 weeks.
18. For loss of leg at hip	234 weeks.
19. For loss of leg at or above knee	195 weeks.
20. For loss of foot at or above ankle	150 weeks.
21. For loss of great toe	30 weeks.
22. For loss of second or distal phalanx of great toe	18 weeks.
23. For loss of any other toe	12 weeks.
24. For loss of middle or second phalanx of any other toe	10 weeks.
25. For loss of third or distal phalanx of any other toe	7 weeks.
26. For loss of an eye	150 weeks.
27. For loss of hearing in one ear	50 weeks.
28. For loss of hearing in both ears	200 weeks.

The amount paid for the loss of more than one finger of one hand shall not exceed the amount provided in this schedule for the loss of a hand. For the loss of the metacarpal bone, of the palm, together with the corresponding thumb or finger, ten weeks shall be added to the number of weeks of payment. The permanent loss of use of a thumb, finger, toe, arm, hand, foot, leg, or

eye shall be considered as the equivalent of the loss of such thumb, finger, toe, arm, hand, foot, leg, or eye, and compensation for partial loss of use of said parts shall be allowed on a percentage basis. Twenty-five percent additional shall be allowed as compensation for the loss of use of the master hand or any member or members thereof. The loss of any part of a phalanx shall be considered equal to the loss of the entire phalanx. If any employee dies from some independent cause, the right of any compensation payable under section 65-05-12 or this section, unpaid at the date of his death, shall survive and pass to his dependent spouse, minor children, parents, or his estate and in that order named. Wherever possible, an impairment award must be made under the terms of this section.

Recovery under this section shall bar an additional award of permanent impairment for the same injury, as elsewhere provided in this chapter. If a compensable injury causes an impairment under this section, and also causes impairment to a part of the body which cannot be compensated under the terms of this section, a whole body award may be made under section 65-05-12 if such award is not duplicative.

An impairment award made by the bureau in the past under this section or section 65-05-12 must be deducted from a subsequent impairment award for injury to the same part of the body.

* SECTION 6. AMENDMENT. Section 65-05-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-28. Examination of injured employee - Paid expenses - No compensation paid if claimant refuses to reasonably participate. After suffering an injury, an employee, as frequently and at such times and places as reasonably may be required, shall submit himself to examination by a duly qualified ~~physician~~ doctor designated or approved by the bureau. The employee may have a duly qualified ~~physician~~ doctor designated and paid by him present to participate in such examination. In case of any disagreement between ~~physicians~~ doctors making an examination on the part of the bureau and the employee's ~~physician~~ doctor, the bureau shall appoint an impartial ~~physician~~ doctor duly qualified who shall make an examination and shall report thereon to the bureau. The employee, in the discretion of the bureau, may be paid his reasonable traveling and other expenses and loss of wages incurred in submitting to any such examination. If the employee refuses to submit himself for, or in any way obstructs, any examination, or refuses reasonably to participate in medical treatments, his right to claim compensation under this title shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues, and the period of such refusal or obstruction shall be deducted from the period for which compensation is payable to him.

SECTION 7. AMENDMENT. Subsection 2 of section 65-13-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. If the mental, physical, or emotional condition of a victim or claimant is material to a claim, the board may order the victim or claimant to submit to a mental or physical examination by a ~~physician~~ doctor or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown upon notice to the person to be examined and to all persons who have appeared. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made, and shall require the person to file with the board a detailed written report of the examination or autopsy. The report shall set out his findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.

Approved April 19, 1989
Filed April 19, 1989

* NOTE: Section 65-05-28 was also amended by section 8 of Senate Bill No. 2237, chapter 766.

CHAPTER 766

SENATE BILL NO. 2237

(Committee on Industry, Business and Labor)

(At the request of the Workers Compensation Bureau)

WORKERS COMPENSATION CLAIMS ADMINISTRATION

AN ACT to amend and reenact sections 65-02-06, 65-05-01, 65-05-02, 65-05-09.1, 65-05-15, 65-05-17, 65-05-25, 65-05-28, 65-05-29, 65-05-30, 65-05-32, 65-05-33, and 65-08-01 of the North Dakota Century Code, relating to workers' compensation and reinsurance, filing on behalf of an injured worker, physician's certificate of physical examinations, offset in cases of social security overpayment, aggravation law application, death benefits, bureau ordered independent medical evaluations, offset in cases of overpayment, medical information available to the bureau, privacy rights of claimants, definition of a false claim, providing a penalty for filing a false claim, bureau authority to compromise and settle disputed claims, and out-of-state jobsites; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 65-02-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-06. Expenditures by bureau from fund - Employment of full-time assistant attorney general authorized. ~~The~~ With prior approval of the emergency commission, the bureau may make necessary expenditures to implement reinsurance. The bureau may make necessary expenditures to obtain statistical and other information required for the proper enforcement of the provisions of this title. The salaries and compensation of the members of the bureau, of its secretary, and of all employees of the bureau, and all other authorized expenses thereof, including the premium on the bond required of the state treasurer under the provisions of section 65-04-30, shall be paid out of the fund. The bureau may employ as its full-time attorney a duly appointed assistant attorney general and pay from the fund the entire salary of such assistant.

SECTION 2. AMENDMENT. Section 65-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-01. Claims for compensation - When and where filed. All original claims for compensation shall be filed by the injured worker, or someone on the injured worker's behalf, within one year after the injury or within two years after the death. The date of injury for purposes of this section shall be the actual date of injury when such can be determined with certainty by the claimant and bureau. When the actual date of injury cannot be determined with certainty the date of injury shall be the first date that a reasonable person knew or should have known that the injury was related to employment. No compensation or benefits shall be allowed under the provisions of this title to any person, except as provided in section

* NOTE: Section 65-02-06 was also amended by section 9 of Senate Bill No. 2324, chapter 295.

65-05-04, unless he or she, or someone on his or her behalf, shall file a written claim therefor within the time specified in this section. Such claim shall be filed by:

1. Delivering it at the office of the bureau or to any person whom the bureau by regulation may designate; or
2. Depositing it in the mail properly stamped and addressed to the bureau or to any person whom the bureau by regulation may designate.

* SECTION 3. AMENDMENT. Section 65-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-02. Form in which claim shall be filed. Every claim shall be made on forms to be furnished by the bureau and shall contain all the information required by it. Each claim shall be signed by the person entitled to compensation or by the person acting on his behalf and, except in case of death, shall be accompanied by a certificate of the employee's physician stating that the employee was physically examined, stating the nature of the injury and the nature and probable extent of the disability. For any reasonable cause shown, the bureau may waive the provisions of this section.

** SECTION 4. AMENDMENT. Section 65-05-09.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-09.1. Social security offset. When an injured employee, spouse or dependent of an injured employee, is eligible for and is receiving permanent total or temporary total disability benefits under section 65-05-09, and is also eligible for, is receiving, or will receive, benefits under Title II of the Social Security Act [42 U.S.C. 423], the aggregate benefits payable under section 65-05-09 shall be reduced, but not below zero, by an amount equal as nearly as practical to one-half of such federal benefit. The federal benefit, or primary insurance amount, must be determined by the social security administration. The amount to be offset must equal the primary insurance amount less attorneys' fees and costs withheld from past due social security benefits or paid directly by the claimant for representation before the social security administration. The amount of the offset computed by the bureau initially will remain the same throughout the period of eligibility and will not be affected by any increase or decrease in federal benefits.

Any injured employee, or dependent of an injured employee, receiving permanent total or temporary total disability benefits under section 65-05-09 and whose benefits are offset as provided herein, shall not be eligible for any escalation of benefits which would adversely affect the bureau's right to offset ~~workmen's~~ workers' compensation benefits against social security benefits, as provided for in this chapter. This offset will become effective on January 1, 1980, provided that it meets the criteria necessary to allow states to offset federal benefits under Title II of the Social Security Act [42 U.S.C. 424a]. Providing further that:

1. If the receipt of social security benefits results in an overpayment of temporary or permanent total disability benefits by the bureau, a refund of any overpayment must be made by the injured worker or that overpayment must be taken from future temporary

* NOTE: Section 65-05-02 was also amended by section 2 of Senate Bill No. 2256, chapter 765.

** NOTE: Section 65-05-09.1 was also amended by section 82 of Senate Bill No. 2056, chapter 69.

total or permanent total disability benefits or permanent partial impairment awards, on the current claim or any future claim filed, at a recovery rate to be determined by the bureau.

2. If a claim has been accepted on an aggravation basis and the injured worker is eligible for social security benefits, the bureau's offset must be proportionally calculated.
3. If any person described in this section refuses to authorize the release of information concerning the amount of benefits payable under the Social Security Act, the bureau's estimate of the amount is deemed to be correct until the actual amount is established and no adjustment may be made for any period of time covered by the refusal.

SECTION 5. AMENDMENT. Section 65-05-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-15. Aggravation of injury or disease - Compensation and benefits not paid for preexisting condition awards. Compensation shall not be paid for any condition which existed prior to the happening of a compensable injury nor for any disability chargeable to such condition. In case of aggravation of a condition existing prior to a compensable injury and in case of the aggravation of a compensable injury by a nonemployment injury, compensation, medical or hospital expenses, or death benefits, shall be allowed by the bureau and paid from the fund only for such proportion of the disability, death benefits, or expense arising from the aggravation of such prior condition as reasonably may be attributable to such compensable injury. If the degree of aggravation cannot be determined, the percentage award shall be fifty percent of total benefits recoverable if one hundred percent of the injury had been the result of employment. But any compensation paid on the basis of aggravation shall not be less than ten dollars per week unless the actual wages of claimant shall be less than ten dollars, in which event the actual wages shall be paid in compensation. However, in case of death due to an employment-aggravated condition, burial expenses and special benefits shall be paid in full pursuant to sections 65-05-17 and 65-05-26. The bureau shall calculate an aggravation award in case of aggravation of a preexisting condition, disease, or infirmity by a compensable injury, and in case of aggravation of a compensable injury by a nonemployment injury, on the following terms:

1. A "preexisting condition" means disability or impairment known in advance of the work injury. It is sufficient to invoke the aggravation statute if the preexisting condition is active at the time of the work injury, evidenced by work restriction (active disability) or interference with function (active impairment).
2. In cases of preexisting condition, aggravated by compensable injury, the bureau shall pay medical expense to treat the acute injury in full. If evidence establishes that the preexisting condition has combined with the work injury, and will necessitate further treatment beyond the acute stage, an aggravation award may be invoked as to the remainder of the medical expense award.

Likewise, the bureau shall pay temporary total disability to the worker, during the acute disability phase, in full. When the worker reaches maximum medical recovery, and is awarded permanent

partial impairment, partial disability, permanent total disability, or vocational retraining services, and the evidence establishes that the preexisting condition has combined with the work injury to produce the continuing disability, an aggravation award may be invoked.

3. In case of aggravation of a prior compensable injury by a nonemployment injury, the aggravation statute may be invoked where the nonemployment injury acts upon the prior compensable injury, and substantially contributes to the severity, acceleration, or progression of the final result, or, if it acts as a trigger to produce recurrent symptoms, and the trigger is itself a substantial aggravating or accelerating factor. All benefits may be apportioned when the aggravation statute is invoked under this subsection. The aggravation statute may not be invoked if the result is but a natural progression of the compensable injury.
4. The bureau shall determine the aggravation award based upon all evidence, as reasonably establishes the proportion or percentage of cause as is reasonably attributable to the compensable injury. If the degree of aggravation cannot be determined, the percentage award must be fifty percent of the total benefits recoverable if one hundred percent of the injury had been the result of employment.
5. Compensation paid on the basis of aggravation may not be less than ten dollars per week unless the actual wages of the claimant were less than ten dollars, in which event the actual wages must be paid in compensation. In case of death due to an employment aggravation condition, burial expenses and special benefits must be paid in full under sections 65-05-17 and 65-05-26. Dependency allowance may not be reduced by the percentage of aggravation and must be paid in full under section 65-05-09.

* SECTION 6. AMENDMENT. Section 65-05-17 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-17. Weekly compensation allowances for death claims. If death results from an injury under the conditions specified in section 65-05-16, the fund shall pay to the following persons, for the periods specified, a weekly compensation:

1. To the spouse or guardian of the orphaned child or children of the decedent, an amount equal to sixty-six and two-thirds percent of the weekly wage of the deceased, at the bureau's benefit rate in effect on the date of death, and not to exceed two hundred ten dollars per week. These benefits continue until the death or remarriage of the spouse; or, in the case of a guardian, until the orphaned child or children of the decedent no longer meets the definition of child in this title. Where there is more than one orphaned child of a decedent, death benefits must be divided equally among guardians. In no case may total death benefits be less than fifty percent of the maximum weekly death benefits. In no case may total death benefits exceed one hundred ninety-seven thousand dollars as a result of any employee's death.

* NOTE: Section 65-05-17 was also amended by section 15 of Senate Bill No. 2324, chapter 295.

2. To each child of the deceased employee, the amount of seven ten dollars per week for each child. This rate must be paid to each eligible child regardless of the date of death. The bureau, in its discretion, may make this payment directly to the child of the deceased employee or to the surviving parent or guardian of the child. Dependency allowance may not be reduced by the percentage of aggravation and must be paid in full.
3. In addition to the awards herein, the commissioners shall make an award in the sum of three hundred dollars to the spouse or guardian of the orphaned child or children of the deceased and one hundred dollars for each dependent child. Where there is more than one guardian of orphaned children, the three hundred dollars must be divided equally among the guardians.

SECTION 7. AMENDMENT. Section 65-05-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-25. Lump sum settlement - Granted in discretion of bureau - How computed. The bureau, if it determines it is in the best interest of the claimant, may pay a lump sum equal to the present value of all future payments of compensation or a lump sum stipulated to by the claimant after an opportunity to seek legal counsel. The bureau and the claimant, after an opportunity to seek legal counsel, may compromise to resolve a disputed claim. The contract of settlement made is enforceable by the parties. The probability of the beneficiary's or claimant's death before the expiration of the period during which he is entitled to compensation shall be determined by reference to generally accepted mortality studies. In case of the spouse of a deceased employee, the lump sum shall not exceed compensation for four hundred sixteen weeks and the probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded. If at the expiration of a period for which lump sum settlement was made hereunder the claimant is still alive and has not remarried, the bureau, in its discretion, may again assume liability and resume pension payments. The bureau may also grant a partial lump sum settlement, based upon the same computations as the complete lump sum. Any decision of the bureau rendered under this section may be appealed to the district court as provided for in chapter 65-10, and the district court shall render its decision sustaining the decision of the bureau, reversing it, or remanding it back to the bureau with instructions.

* SECTION 8. AMENDMENT. Section 65-05-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-28. Examination of injured employee - Paid expenses - No compensation paid if claimant refuses to reasonably participate. After suffering an injury, an employee, as frequently and at such times and places as reasonably may be required, shall submit himself to examination by a duly qualified physician designated or approved by the bureau. The employee may have a duly qualified physician designated and paid by him present to participate in such examination. In case of any disagreement between physicians making an examination on the part of the bureau and the employee's physician, the bureau shall appoint an impartial physician duly qualified who shall make an examination and shall report thereon to the bureau. The employee, in the discretion of the bureau, may be paid his reasonable traveling and other expenses and loss of wages incurred in submitting to any such examination. If the employee refuses to submit himself for, or in any

* NOTE: Section 65-05-28 was also amended by section 6 of Senate Bill No. 2256, chapter 765.

way obstructs, any examination, or refuses reasonably to participate in medical treatments, his right to claim compensation under this title shall be suspended until such refusal or obstruction ceases. No compensation shall be payable while such refusal or obstruction continues, and the period of such refusal or obstruction shall be deducted from the period for which compensation is payable to him. Every employee who sustains an injury may select a physician of that employee's choice to render initial treatment. An injured employee shall follow the directives of that employee's physician or health care provider, and comply with all reasonable requests during the time the employee is under medical care. Providing further that:

1. No employee may change from one physician to another while under treatment or after being released, without the prior written authorization of the bureau. Failure to obtain approval of the bureau renders the employee liable for the cost of treatment and the new physician will not be considered the attending physician for purposes of certifying temporary disability.
 - a. Any employee requesting a change of physician shall file a written request with the bureau stating all reasons for the change. Upon receipt of the request, the bureau will review the employee's case and approve or deny the change of physician, notifying the employee and the requested physician.
 - b. Emergency care or treatment or referral by the attending physician does not constitute a change of physician and does not require prior approval of the bureau.
2. Travel and other personal reimbursement for seeking and obtaining medical care is paid only upon request of the injured employee. All claims for reimbursement must be supported by the original vendor receipt and must be submitted within one year of the date the expense was incurred or reimbursement must be denied. Reimbursement must be made at the bureau reimbursement rates in effect on the date of incurred travel or expense. Mileage calculations must be based upon the atlas or map mileage from city limit to city limit and do not include intracity mileage. Providing further that:
 - a. No payment for mileage or other travel expenses may be made when the distance traveled is less than fifty miles [80.47 kilometers] one way, unless the total mileage equals or exceeds two hundred miles [321.87 kilometers] in a calendar month;
 - b. All travel reimbursements are payable at the rates at which state employees are paid per diem and mileage, except that the bureau may pay no more than actual cost of meals and lodging, if actual cost is less;
 - c. Reimbursement may not be paid for travel other than that necessary to obtain the closest available medical or hospital care needed for the injury. If the injured employee chooses to seek medical treatment outside a local area where care is available, travel reimbursement may be denied;
 - d. Reimbursement may not be paid for the travel and associated expenses incurred by the injured employee's spouse, children,

or other persons unless the employee's injury prevents travel alone and the inability is medically substantiated; and

- e. Other expenses, including telephone calls and car rentals are not reimbursable expenses.
- 3. The bureau may at any time require an employee to submit to an independent medical examination by a duly qualified physician or physicians designated or approved by the bureau. The independent medical examination must be for the purpose of review of the diagnosis, prognosis, treatment, or fees. The employee may have a duly qualified physician designated by that employee present at the examination if procured and paid for by that employee. Providing further that:
 - a. In case of any disagreement between physicians making an examination on the part of the bureau and the employee's physician, the bureau shall appoint an impartial physician duly qualified who shall make an examination and shall report to the bureau.
 - b. The employee, in the discretion of the bureau, may be paid reasonable travel and other per diem expenses under the guidelines of subsection 2. If the employee is working and loses gross wages from the employee's employer for attending the examination, the gross wages must be reimbursed as a miscellaneous expense upon receipt of a signed statement from the employer verifying the gross wage loss.
- 4. If an employee, or the employee's representative, refuses to submit to, or in any way intentionally obstructs, any examination, or refuses reasonably to participate in medical or other treatments, the employee's right to claim compensation under this title is suspended until the refusal or obstruction ceases. No compensation is payable while the refusal or obstruction continues, and the period of the refusal or obstruction must be deducted from the period for which compensation is payable to the employee.

SECTION 9. AMENDMENT. Section 65-05-29 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-29. Assignment of claims void - Claims exempt. Any assignment of a claim for compensation under this title shall be void. All compensation and claims therefor shall be exempt from claims of creditors except ~~either~~ any of the following:

- 1. A child support obligation ordered by a court of competent jurisdiction.
- 2. A claim by job service North Dakota for reimbursement of unemployment benefits, for the amount that was paid by job service during the period for which the claimant is found eligible for temporary total, or permanent total disability benefits, not to exceed the disability award actually made by the bureau.
- 3. A claim by the bureau for any payments made due to:

- a. Clerical error, mistake of identity, innocent misrepresentation by or on behalf of the recipient, or any other circumstance of a similar nature, all not induced by fraud, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the bureau;
- b. An adjudication by the bureau or by order of the board or any court, if the final decision is that the payment was made under an erroneous adjudication, in which cases the recipient shall repay it or recoupment of any unpaid amount may be made from any future payments due to the recipient on any claim with the bureau;
- c. Fraud, in which case the recipient shall repay the payment or the unpaid amount of the sum may be recouped from any future payments due to the recipient on any claim with the bureau; or
- d. Overpayment due to application of section 65-05.1-09.

SECTION 10. AMENDMENT. Section 65-05-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-30. Filing of claim constitutes consent to use of information received by doctor. The filing of a claim with the bureau shall constitute a consent to the use by the bureau, in any proceeding by it or to which it is a party in any court, of any information including subsequent prognosis reports, medical records, medical bills, and other information concerning any health care or health care services which was received by any doctor, hospital, or clinic in the course of any examination or treatment of the claimant. The filing of such claim shall authorize a doctor, hospital, or clinic to disclose any such information to the bureau or to its representative. No physician or health care provider furnishing such reports or records incurs any liability as a result.

SECTION 11. AMENDMENT. Section 65-05-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-32. Privacy of records and hearings. The bureau shall keep the medical files of claimants closed to the public and may, at the request of a claimant, close the medical portion of the hearing to the public. However, an employer of a claimant shall have access to the file of the claimant. In the event that a source from outside the bureau requests in writing that information submitted by such source be kept confidential, such information may be released only upon court order. Information contained in the claim files and records of injured employees is confidential and is not open to public inspection, other than to bureau employees or agents in the performance of their official duties. Providing further that:

1. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant.
2. Employers or their duly authorized representatives may review and have access to any files of their own injured workers.

3. Physicians or health care providers treating or examining workers claiming benefits under this title, or physicians giving medical advice to the bureau regarding any claim may, at the discretion of the bureau, inspect the claim files and records of injured workers.
4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the bureau at any stage of the proceedings on any matter pertaining to the administration of this title.
5. The claimant's name; social security number; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public.
6. At the request of a claimant, the bureau may close the medical portion of a hearing to the public.

SECTION 12. AMENDMENT. Section 65-05-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-33. Filing false claim or false statements - Penalty. Any claimant who files a false claim or makes a false statement in connection with any claim or accepts total disability benefits paid for a period after the claimant has returned to work is guilty of a class B misdemeanor. In addition to any other penalties provided by law, the claimant shall reimburse the bureau for any benefits paid based upon such false claim or false statement or for such period that the claimant was not totally disabled; and, in addition, shall forfeit any additional benefits relative to that same injury. Any person claiming benefits or payment for services under this title, who willfully files a false claim or makes a false statement, in connection with any claim or application under this title is guilty of a class B misdemeanor. Provided further that:

1. For the purposes of this section, the term "statement" includes any testimony, claim form, notice, proof of injury, proof of return to work status, bill for services, diagnosis, prescription, hospital or doctor records, X-ray, test results, or other evidence of loss, injury, or expense.
2. In addition to any other penalties provided by law, the person claiming benefits or payment for services in violation of this section shall:
 - a. Reimburse the bureau for any benefits paid based upon the false claim or false statement, and if applicable, under section 65-05-29.
 - b. Forfeit any additional benefits relative to that injury.

SECTION 13. AMENDMENT. Section 65-08-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-08-01. Extraterritorial coverage, when and how furnished.

1. Compensation shall be paid on account of injuries occurring outside this state or because of death due to an injury occurring outside of this state only when:
 - ~~1-~~ a. A North Dakota employee is a duly qualified peace officer of this state who received injury or was killed outside of this state in the course of his employment.
 - 2- b. A North Dakota employee sustains an injury beyond the borders of this state in a service which is incidental to and is referable to the principal employment, the situs of which is within North Dakota.
 - ~~3-~~ c. A North Dakota employer and the bureau previously shall have contracted for insurance protection for employees while working outside of this state in the employment in which the injury occurred, which employment is incidental to or referable to the principal employment the localization and situs of which is not in North Dakota.
 - ~~4-~~ d. A North Dakota employer or his authorized agent has hired an employee, who is a resident of another state, for temporary employment the situs of which is located in another state, and where such temporary employment is necessary to the principal employment of such employer, provided that such other state recognizes the coverage under this title as a sole remedy of the employee against the employer for such injury or death.
2. If the injury is sustained at an identifiable out-of-state jobsite, the services rendered and injury sustained may not be deemed to be incidental and referable to the North Dakota employment, even if the contractual relationship between employer and employee was entered in North Dakota.
3. An employer of over-the-road truck drivers will be deemed to be a North Dakota employer only if:
 - a. The employer's trucking business has an office, operates, and dispatches from North Dakota; and
 - b. The employer retains control over the driver, and does not exclusively lease the driver to out-of-state employers.

Approved April 28, 1989

Filed April 28, 1989

CHAPTER 767

SENATE BILL NO. 2173
(Committee on Industry, Business and Labor)
(At the request of the Workers Compensation Bureau)

WORKERS COMPENSATION ATTORNEYS' FEES

AN ACT to amend and reenact sections 65-02-08 and 65-10-03 of the North Dakota Century Code, relating to the payment of attorneys' fees by the North Dakota workers compensation bureau; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-02-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-02-08. Rulemaking power of the bureau - Fees prescribed by bureau. The bureau shall make, promulgate, and enforce such rules, not inconsistent with the provisions of this title, as may be necessary to carry out the provisions of this title. All fees on claims for legal, medical, and hospital services rendered under this title to any claimant must be in accordance with schedules of fees adopted or to be adopted by the bureau. The bureau shall specify the amount allowable for court reporter and attorney's fees in proceedings before the bureau and shall pay the same from the bureau general fund, provided further that proceedings are defined as commencing after action by the bureau which reduces or denies a claim. Such attorney's fees shall constitute the entire remuneration for the claimant's attorney for all services before the bureau establish, by administrative rule, an hourly rate to compensate claimants' attorneys for legal services following constructive denial of a claim or issuance of an administrative order under chapter 28-32 reducing or denying benefits. "Constructive denial" means delay in payment, failure to issue an administrative order, or failure to act within ninety days of the date when all elements of filing or notice of reapplication of claim have been satisfied or a claim for additional benefits over and above benefits previously awarded has been made. The bureau shall establish, by administrative rule, a reasonable maximum fee for each stage of the proceedings, provided further that the maximum fee may be exceeded upon application of the claimant and approval of the bureau, which may not be unreasonably denied, upon a finding that the claim has clear and substantial merit and additional fees are warranted because the legal or factual issues involved in the dispute are unusually complex. The bureau may also provide, by administrative rule, an hourly fee for legal assistants or paraprofessionals, and fees for court reporters. The bureau may establish reasonable rules governing payment of fees, required fee statements, billing practices, reimbursement for costs, and other necessary rules governing payment for legal services not inconsistent with the provisions of this title. All attorneys' fees and costs must be paid from the bureau general fund. Nothing provided herein may be construed to prevent a claimant or employer from hiring or paying his or her own attorney; however, the claimant's attorney shall not seek or obtain costs or attorney's fees from

both the bureau and the claimant relative to the same services. The bureau may deny attorneys' fees upon a finding that the claim is frivolous. All disputes relating to payment or denial of attorneys' fees must be submitted to binding arbitration by a fee arbitration panel composed of one member selected by the claimant's attorney, one member selected by the bureau, and one member selected jointly by the claimant's attorney and the bureau. An attorney who agrees to accept compensation from the bureau for services pursuant to this section agrees to binding fee arbitration of all disputes relating to payment or denial of fees.

SECTION 2. AMENDMENT. Section 65-10-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-10-03. Cost of appeal and attorney's fee fixed by the ~~court~~ bureau. The cost of the judicial appeal and an attorney's fee for the appellant's claimant's attorney shall must be set by the appellate court and taxed ~~against~~ borne by the bureau unless the appeal is determined to be frivolous when the claimant prevails. The claimant is deemed to have prevailed when any part of the decision of the bureau is reversed or the claim is remanded to the bureau for further administrative proceedings. In an appeal by the bureau to the North Dakota supreme court, the claimant shall recover costs and attorneys' fees incurred in responding to the appeal. The bureau shall pay such attorney's fee from the bureau general fund. The amount of such attorney's fee shall must be determined in the same manner as prescribed by the bureau for attorney fees, and the amount of attorney's fee already allowed in administrative proceedings before the bureau ~~shall~~ must be taken into consideration. The bureau shall, pursuant to section 65-02-08, establish a maximum fee to be paid in an appeal, provided that the maximum fee may be exceeded upon application of the claimant and approval of the court, upon a finding that the claim had clear and substantial merit, and that the legal or factual issues involved in the appeal were unusually complex. Notwithstanding the foregoing, the bureau is liable for its costs on appeal if the decision of the bureau is affirmed.

Such attorney's fee shall constitute the entire remuneration for the appellant's attorney for all services in connection with the appeal. Nothing provided herein shall be construed to prevent a claimant or employer from hiring or paying his or her own attorney.

SECTION 3. EFFECTIVE DATE. This Act applies to all legal services rendered to claimants on or after July 1, 1989.

Approved April 19, 1989
Filed April 19, 1989

CHAPTER 768

SENATE BILL NO. 2323
(Senators Olson, D. Meyer, Langley)
(Representatives Whalen, Mertens, Dorso)

WORKERS COMPENSATION ADVISORY COUNCIL

AN ACT to create and enact a new section to chapter 65-02 of the North Dakota Century Code, relating to a workers compensation advisory council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 65-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

State advisory council - Composition - Compensation - Duties. The bureau shall appoint a state advisory council composed of an equal number of employer representatives and employee representatives who may be regarded fairly as representative because of their vocation, employment, or affiliations, and members representing the general public as the bureau may designate. The council shall aid the bureau in formulating policies, discussing problems related to the administration of the bureau, and in assuring impartiality and freedom from political influence in the solution of these problems. The members of the council may be reimbursed for expenses in the amounts provided by law for state officials but must serve without further compensation except as may be authorized and fixed by the bureau by rule. The bureau shall provide staff services to the council. The council shall assist the bureau in formulating policies and discussing problems related to the administration of the bureau, including adoption of rules, establishment of fees, determination of employer premium rates, maintenance of the solvency of the workers compensation fund, and provision of rehabilitation services. The council may make recommendations and proposals for consideration by the bureau.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 769

HOUSE BILL NO. 1119
(Committee on Industry, Business and Labor)
(At the request of the Workers Compensation Bureau)

WORKERS COMPENSATION MEDICAL CHARGES

AN ACT to amend and reenact section 65-05-07 of the North Dakota Century Code, relating to prohibition against a medical provider billing the claimant for the difference between the usual and customary charge and the amount allowed by the bureau fee schedule.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-07. Injured employee given medical and hospital service required - Furnished artificial limbs and appliances for rehabilitation. Immediately after an injury sustained by an employee and during the resulting period of disability, the fund shall furnish to the employee such reasonable and appropriate medical, surgical, and hospital service and supplies as the nature of the injury may require. If the injury causes permanent impairment, the fund, in addition to the specific benefits provided, may furnish such artificial limbs, glasses, braces, equipment, or appliances or provide such rehabilitation services. The fund may furnish such artificial members and replacements as in the judgment of the bureau may be necessary to rehabilitate such injured employee. The bureau may not provide any permanent additions, remodeling, or adaptations to real estate under this section.

1. The health care provider or physician must be acting within the scope of the provider's or physician's license or fees will be denied.
2. Fees may not be approved for more than one health care provider or physician, or both, in a case where treatment is provided over the same period of time except for the services of a consulting physician, assistant surgeon, or anesthetist or in an emergency.
3. The bureau, in cooperation with professional organizations of doctors and health care providers, shall establish a system of peer review to determine reasonableness of fees and payment denials for unjustified treatments, hospitalization, or visits. The doctor or health care provider shall have the right to appeal adverse decisions of the bureau in accordance with the medical aid rules adopted by the bureau.
4. Health care providers or doctors may not bill injured workers for any services rendered as a result of the compensable work injury.
5. If the bureau determines that it is necessary to provide permanent additions, remodeling, or adaptations to real estate to those workers who sustain catastrophic injury as defined in chapter 65-05.1, such improvements may be made, but may not exceed ten thousand dollars for the life of the claimant, regardless of any subsequent claim.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 770

HOUSE BILL NO. 1128
(Committee on Industry, Business and Labor)
(At the request of the Workers Compensation Bureau)

WORKERS COMPENSATION DISABILITY BENEFITS

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to offset of workers compensation benefits by social security benefits; and to amend and reenact sections 65-05-08, 65-05-09, and 65-05-10 of the North Dakota Century Code, relating to workers compensation partial and total disability and benefits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-08. Compensation not paid unless period of disability is of five days' duration or more - ~~Paid during disability~~ Application required. No compensation will be paid for total or partial disability, the duration of which is less than five consecutive calendar days. If the period of total or partial disability is of five consecutive calendar days' duration or more compensation shall be paid during such disability providing that:

1. When partial or total disability benefits are discontinued, the claimant shall provide the bureau written notice of reapplication for disability benefits. In case of reapplication, the award may commence no more than thirty days before the date of reapplication.
2. A health care provider or physician may not certify or verify past disability unless the health care provider or physician has examined the employee within the previous sixty days and filed those reports required by this title. A health care provider or physician certifying disability shall include in the report the basis for the certification of disability and a professional opinion as to the expected length of, and reason for, the disability.
3. All payments of benefits must be suspended during the period of confinement of any worker who is eligible for, or receiving, benefits under this title who is confined in any institution under conviction and sentence unless the worker has a spouse or child, in which case the benefits must be paid directly to such spouse or child. After discharge from the institution, payment of benefits thereafter due must be paid as the worker would, but for the provisions of this subsection, otherwise be entitled.
4. Any worker who is eligible for, or receiving, disability benefits under this title shall report any wages earned, from part-time or full-time employment, from the employer of injury or any other

employer. Failure to report such wages earned requires the worker to refund to the bureau any partial or total disability benefits overpaid by the bureau for that time period. To facilitate recovery, the bureau may offset future benefits otherwise payable, under section 65-05-29.

5. The provisions of this section apply to any disability claim asserted against the fund on or after July 1, 1989, irrespective of injury date.

SECTION 2. AMENDMENT. Section 65-05-09 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-09. Temporary total or permanent total disability - Weekly and aggregate compensation. If an injury causes temporary total or permanent total disability, the fund shall pay to the disabled employee during such disability a weekly compensation equal to sixty-six and two-thirds percent of the gross weekly wage of the claimant, computed to the next highest dollar, subject to a minimum of sixty percent and a maximum of one hundred percent of the average weekly wage in this the state, computed to the next highest dollar. If an employee is disabled due to an injury, that employee's benefits will be based upon the employee's wage at the time of the commencement of the first disability and the bureau benefit rates in effect on the date of first disability. However, if

1. If an employee suffers disability but is able to return to employment for a period of twelve months or more, that employee's benefits will be based upon the wage in effect at the time of the recurrence of the disability or upon the wage that employee received prior to the injury, whichever is higher; and the benefits bureau benefit rates shall be those in effect at the time of that recurrence.
2. In case of temporary permanent total or permanent temporary total disability, there must be paid to such disabled employee an additional sum of ten dollars per week for each child of the employee dependency allowance for each child of the employee at the rate of ten dollars per week per child. Effective July 1, 1989, this rate must be paid to each eligible employee regardless of the date of injury.
3. Dependency awards allowance for the children may be made directly to either parent or guardian at the discretion of the bureau.
4. In no case may the compensation or combined compensation and dependency award exceed the weekly wage of the employee after deductions for taxes, except in the case of volunteer firemen and volunteer disaster emergency trainees social security and federal income tax.
5. When an employee who is permanently and totally disabled and must be maintained in a nursing home or similar facility, and has no dependent parent, spouse, or children, part or all of his that employee's weekly compensation may be used by the bureau to help defray the cost of such care.

SECTION 3. AMENDMENT. Section 65-05-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05-10. Partial disability - Weekly compensation. If the injury causes temporary partial disability ~~the fund shall pay to the disabled employee during such disability a weekly compensation to be fixed by the bureau~~ resulting in decrease of earning capacity, the compensation is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury and the employee's wage earning capacity after the injury in the same or another employment. However, the partial disability benefits may not exceed an amount equal to sixty-six and two-thirds percent of the employee's average weekly wage at the time of the injury.

1. It is the burden of the employee to show that the inability to obtain employment or to earn as much as the employee earned at the time of injury, is due to physical limitation related to the injury, and that any wage loss claimed is the result of the compensable injury.
2. If the employee voluntarily limits income or refuses to accept employment suitable to the employee's capacity, offered to or procured for the employee, such employee is not entitled to any compensation at any time during the continuance of such refusal unless, at any time, such refusal is justified in the opinion of the bureau.
3. No compensation is payable unless the loss of earning power exceeds ten percent. The claimant may earn up to ten percent of the claimant's average gross weekly earnings with no reduction in total disability benefits.
4. Upon securing suitable employment, the injured employee shall notify the bureau of the name and address of the employer, the date the employment began, and the amount of wages being received on an annual basis. The injured employee shall notify the bureau whenever there is a change in wages received.
5. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning power occurs after July 1, 1989. Partial loss of earning power occurring prior to July 1, 1989, must be paid at a rate to be fixed by the bureau.
6. Dependency allowance must be paid under section 65-05-09 on claims receiving benefits under this section.

SECTION 4. A new section to chapter 65-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Retirement offset. If a claimant is entitled to permanent total disability benefits and social security retirement benefits under 42 U.S.C. sections 402 and 405, the aggregate wage-loss benefits payable under this title must be determined in accordance with this section. The employee's social security retirement offset must equal forty percent of the calculated ratio of the employee's average weekly wages, as calculated on the commencement of the first, or recurrent, disability under section 65-05-09,

to the current state's average weekly wage. Any offset calculated cannot exceed forty percent of the employee's weekly social security retirement benefit. If a claim has been accepted on an aggravation basis and the worker is eligible for social security benefits, the bureau's offset must be proportionally calculated. An overpayment must be recouped in the same manner as set forth in section 65-05-09.1. The provisions of this section are effective for workers who retire on or after July 1, 1989.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 771

HOUSE BILL NO. 1191
(Committee on Industry, Business and Labor)
(At the request of the Workers Compensation Bureau)

WORKERS COMPENSATION REHABILITATION BENEFITS

AN ACT to create and enact two new sections to chapter 65-05.1 of the North Dakota Century Code, relating to workers' compensation rehabilitation services; to amend and reenact sections 65-05.1-01, 65-05.1-02, and 65-05.1-04 of the North Dakota Century Code, relating to workers' compensation rehabilitation services; to repeal sections 65-05.1-05 and 65-05.1-06 of the North Dakota Century Code, relating to workers' compensation rehabilitation services; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 65-05.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.1-01. Rehabilitation services.

1. The state of North Dakota exercising its police and sovereign powers, declares that disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.
2. It is the purpose of this chapter to provide for the health and welfare by ensuring to ~~workmen's~~ workers' compensation claimants otherwise covered by this title, services, so far as possible, necessary to assist the claimant and the claimant's family in the adjustments required by the injury to the end that the claimant may receive comprehensive rehabilitation services. Such services shall include medical, psychological, economic, and social rehabilitation.
3. It is the goal of vocational rehabilitation to return the disabled worker to substantial gainful employment with a minimum of retraining, as soon as possible after an injury occurs. "Substantial gainful employment" means bona fide work, for remuneration, which is reasonably attainable in light of the individual's injury, medical limitations, age, education, previous occupation, experience, and transferable skills, and which offers an opportunity to restore the worker as soon as practical and as nearly as possible to the worker's average weekly earnings at the time of injury, or to the average weekly wage in this state on the date the rehabilitation consultant's report is issued under section 3 of this Act, whichever is less.

* NOTE: Section 65-05.1-01 was also amended by section 83 of Senate Bill No. 2056, chapter 69.

4. The first appropriate option among the following, calculated to return the worker to substantial gainful employment, must be chosen for the worker:
 - a. Return to the same position.
 - b. Return to a modified position.
 - c. Return to a related occupation suited to the worker's education, experience, and marketable skills.
 - d. On-the-job training.
 - e. Short-term retraining of fifty-two weeks or less.
 - f. Long-term retraining of one hundred four weeks or less.
 - g. Self-employment.
5. By agreement between the bureau and the worker, the priority options in subsection 4 may be waived.
6. Vocational rehabilitation services may be initiated by:
 - a. The bureau on its own motion; or
 - b. The worker or the employer if proof exists:
 - (1) That the claimant has reached maximum medical recovery;
 - (2) That the claimant is not working and has not voluntarily retired or removed himself from the labor force; and
 - (3) That the worker has made good faith efforts to seek, obtain, and retain employment.
7. The provisions of chapter 50-06.1 do not apply to determinations of eligibility for vocational rehabilitation made pursuant to this chapter.

SECTION 2. AMENDMENT. Section 65-05.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.1-02. Bureau responsibility. The ~~workmen's~~ workers compensation bureau shall:

1. Appoint a director of rehabilitation services and such other staff as necessary to fulfill the purposes of this chapter.
2. Cooperate with such federal or state agency as shall be charged with vocational education, vocational rehabilitation, and job placement in order that any duplication of effort can be avoided, as far as possible, in any individual claim.
3. Make determinations on individual claims as to the extent and duration of the ~~workmen's~~ workers compensation bureau involvement under this chapter.

4. Enter into such agreements with other agencies and promulgate any rules or regulations as may be necessary or advantageous in order to carry out the purpose of this chapter.
5. Provide such rehabilitation services and allowances as may be determined by the bureau to be most beneficial to the claimant worker within the limits of this chapter.
6. Establish medical assessment teams, the composition of which must be determined by the bureau on a case-by-case basis, as the nature of the injury may require, for the purpose of assessing the worker's physical restrictions and limitations. The medical assessment team must be provided the medical records compiled by the worker's treating physicians. The medical assessment team may consult the worker's treating physicians prior to making its final assessment of the worker's functional capacities. The provisions of section 65-05-28 do not apply to the medical findings made under this section.
7. Appoint one or more vocational consultants, the identity of which must be determined by the bureau on a case-by-case basis, as the nature of the injury may require, for the purpose of assessing the worker's transferable skills, employment options, and the physical demand characteristics of the worker's employment options, and determining which option available under subdivisions a through f of subsection 4 of section 65-05.1-01 will enable the worker to return to employment within the physical restrictions and limitations provided by the medical assessment team. The vocational consultant shall issue to the bureau a report as provided in section 3 of this Act.

SECTION 3. A new section to chapter 65-05.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Vocational consultant's report. The vocational consultant shall review all records, statements, and other pertinent information and prepare a report to the bureau and worker.

1. The report must:

- a. Identify the first appropriate rehabilitation option by following the priorities set forth in subsection 4 of section 65-05.1-01.
- b. Contain findings of why a higher listed priority, if any, is not appropriate.

2. Depending on which option the consultant identifies as appropriate, the report also must contain findings that:

- a. Identify jobs in the local or statewide job pool and the worker's anticipated earnings from each job;
- b. Describe an appropriate on-the-job training program, and the worker's anticipated earnings;

- c. Describe an appropriate short-term or long-term retraining program, the employment opportunities anticipated upon the worker's completion of the program, and the worker's anticipated earnings; or
- d. Describe the worker's potential for specific self-employment, limitations the worker might have in such a self-employment, any assistance necessary, and the worker's anticipated earnings.

SECTION 4. AMENDMENT. Section 65-05.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.1-04. Injured worker responsibility.

- 1. It shall be the responsibility of the injured worker to seek, obtain, and retain reasonable and substantial employment in order to reduce the period of temporary disability to a minimum. The worker has the burden to establish that the worker has met this responsibility.
- 2. In the event that the injured worker is unable to obtain substantial employment as a direct result of his injury he shall promptly notify the bureau and thereafter be available for such examinations and testing as may be prescribed by the bureau to determine whether or not a program of rehabilitation is necessary under subdivision b of subsection 6 of section 65-05.1-01.
- 3. It is the responsibility of the injured worker to be available for testing under subsection 6 or 7 of section 65-05.1-02, and for any further examinations and testing as may be prescribed by the bureau to determine whether or not a program of rehabilitation is necessary.
- 4. If the bureau determines that a program of rehabilitation is necessary and feasible, the injured worker, upon having been so notified, shall be available for such a program. Upon notification, with the appropriate assistance and testing from a vocational coordinator appointed by the bureau, the worker shall identify a specific qualified rehabilitation program within sixty days. A qualified rehabilitation program is a rehabilitation plan that meets the criteria of this title, and which is an approved option of the rehabilitation consultant, or is a stipulated rehabilitation plan under subsection 5 of section 65-05.1-01.
- 5. If the injured worker shall fail to comply with this section without a reasonable cause, the bureau, by ~~format~~ administrative order, shall discontinue all lost-time benefits under this title during the period of noncompliance. If, upon the bureau order becoming final, the period of noncompliance shall continue for six months, the bureau shall have no further jurisdiction in awarding any further temporary total, temporary partial, permanent total, or rehabilitation benefits.

SECTION 5. A new section to chapter 65-05.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Rehabilitation award.

1. If the bureau determines that vocational rehabilitation is necessary and feasible, the bureau shall make an award of rehabilitation services by order, under chapter 28-32. The bureau shall establish, by administrative rule, an hourly rate to compensate a worker's attorney from the date the bureau has notified the worker to identify a rehabilitation plan under section 65-05.1-04. The bureau may establish, by administrative rule, absolute maximum fees for such representation.
2. The rehabilitation award must be within the following terms:
 - a. For the worker's lost time, and in lieu of further temporary total, temporary partial, and permanent total disability benefits, the bureau shall award a rehabilitation allowance. The rehabilitation allowance must be limited to the amount and purpose specified in the award, and must be equal to the disability and dependent benefits the worker was receiving, or was entitled to receive, prior to the award.
 - b. The rehabilitation allowance must include an additional twenty-five percent while the worker maintains two domiciles, or meets other criteria established by the bureau by administrative rule.
 - c. The rehabilitation allowance must be limited to one hundred four weeks except in cases of catastrophic injury, in which case additional rehabilitation benefits may be awarded in the discretion of the bureau. Catastrophic injury includes:
 - (1) Paraplegia, quadraplegia, severe closed head injury, total blindness, or amputation of an arm or leg, which renders a worker permanently and totally disabled without further vocational retraining assistance; or
 - (2) Those workers the bureau so designates, in its sole discretion, provided that the bureau finds the worker to be permanently and totally disabled without further vocational retraining assistance. There is no appeal from a bureau decision to designate, or fail to designate, a worker as catastrophically injured under this subsection.
 - d. The rehabilitation award must include the cost of books, tuition, fees, and equipment, tools, or supplies required by the educational institution. The award may not exceed the cost of attending a public college or university in the state in which the worker resides, provided an equivalent program exists in the public college or university.
 - e. The rehabilitation allowance may be paid only during such time as the worker faithfully pursues vocational retraining. The rehabilitation allowance may be suspended during such time as the worker is not faithfully pursuing the training program, or has failed academically. If the work injury itself precludes the worker from continuing training, the worker remains eligible to receive disability benefits.

- f. In the event the worker successfully concludes the rehabilitation program, the bureau may make, in its sole discretion, additional awards for actual relocation expenses to move the household to the locale where the claimant has actually located work.
- g. In the event the worker successfully concludes the rehabilitation program, the bureau may make, in its sole discretion, an additional award, not to exceed two months disability benefit, to assist the worker with work search.
- h. If the worker successfully concludes the rehabilitation program, the worker is not eligible for further vocational retraining or total disability benefits unless the worker establishes a significant change in medical condition attributable to the work injury which precludes the worker from performing the work for which the worker was trained, or any other work for which the worker is suited. The bureau may waive the provisions of this section in cases of catastrophic injury defined by subdivision c of subsection 2.
- i. If the worker successfully concludes the rehabilitation program, the worker remains eligible to receive partial disability benefits, as follows:

 - (1) Beginning the date at which the worker completes retraining, until the worker acquires and performs substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured worker's average weekly wages before the injury, and the worker's wage-earning capacity after retraining, as measured by the average wage in the worker's occupation, according to criteria established by job service North Dakota in its statewide labor market survey, or such other criteria the bureau, in its sole discretion, deems appropriate. The average weekly wage must be determined on the date the worker completes retraining. The benefit continues until the worker acquires substantial gainful employment, but in no case may exceed two years in duration.
 - (2) Beginning the date at which the worker acquires substantial gainful employment in the field for which the worker was trained, or in a related occupation, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured worker's average weekly wages before the injury, and the worker's wage-earning capacity after retraining.
 - (3) Beginning the date at which the worker acquires substantial gainful employment in an occupation unrelated to the worker's training, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured worker's weekly wages before the injury, and the worker's wage-earning capacity after retraining, as determined under paragraph 1 of this

subdivision i, or the worker's actual postinjury wage earnings, whichever is higher.

- (4) The partial disability benefit payable under paragraphs 1, 2, and 3 of this subdivision must be reduced so that the benefit and the worker's earnings or calculated earnings capacity, together, do not exceed one hundred twenty-five percent of the average weekly wage in this state. For purposes of this subsection, the average weekly wage must be determined on the date the worker completes retraining or the date the worker acquires substantial gainful employment. The partial disability benefit so calculated is not subject to increase or decrease when the average weekly wage in this state changes.
- (5) The partial disability benefits paid under paragraphs 1, 2, and 3 of this subdivision may not together exceed five years' duration.
- (6) For purposes of paragraph 1 of this subdivision, the date the worker completes retraining is defined as the date the worker is available for full-time work. A worker cannot be deemed available for full-time work while the worker pursues education, unless such pursuit will in no way interfere with full-time work.
- (7) For purposes of paragraphs 1, 2, and 3 of this subdivision, "substantial gainful employment" means full-time bona fide work, for a remuneration, other than make-work. "Full-time work" means employment for twenty-eight or more hours per week, on average.
- (8) The bureau may waive the five-year limit on the duration of partial disability benefits, in cases of catastrophic injury under subdivision c of subsection 2.

* SECTION 6. REPEAL. Section 65-05.1-05 of the North Dakota Century Code and section 65-05.1-06 of the 1987 Supplement to the North Dakota Century Code are hereby repealed.

SECTION 7. EFFECTIVE DATE. The duties, responsibilities, and benefits available under this Act apply to all awards of vocational rehabilitation services made on or after July 1, 1989, irrespective of injury date.

Approved April 14, 1989
Filed April 17, 1989

* NOTE: Section 65-05.1-06 was also amended by section 17 of Senate Bill No. 2324, chapter 295.

CHAPTER 772

HOUSE BILL NO. 1364
(Representatives Graba, Gerl, Haugland)
(Senators Stenehjem, Schoenwald)

WORKERS COMPENSATION SUPPLEMENTARY BENEFITS

AN ACT to amend and reenact section 65-05.2-02 of the North Dakota Century Code, relating to supplementary workers' compensation benefits; and to provide for application of the Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-05.2-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-05.2-02. Supplementary benefits - Amount. Claimants who are eligible for supplementary benefits and who are receiving temporary total disability benefits or permanent total disability benefits are entitled to receive a weekly benefit of at least one hundred ~~fifty~~ sixty dollars per week. Claimants who are eligible for supplementary benefits and who are receiving death benefits are entitled to receive a weekly benefit of at least ~~ninety~~ one hundred dollars per week.

SECTION 2. APPLICATION OF ACT. This Act applies to benefits payable after June 30, 1989.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 773

SENATE BILL NO. 2477
(Schoenwald)

MODEL BOILER INSPECTION EXEMPTION

AN ACT to create and enact a new subsection to section 65-12-04.1 of the North Dakota Century Code, relating to exemption of miniature model boilers from boiler inspection.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 65-12-04.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Boilers of a miniature model locomotive, boat, tractor, or stationary engine design constructed as a hobby and not for commercial use having an inside diameter not exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and one-half square feet [1393.54 square centimeters] and which are properly equipped with a safety valve, water level indicator, and pressure gauge.

Approved March 28, 1989
Filed March 28, 1989

CHAPTER 774

HOUSE BILL NO. 1522
(Graba)

BOILER INSPECTION FEES

AN ACT to amend and reenact section 65-12-11 of the North Dakota Century Code, relating to workers' compensation boiler inspection fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-12-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

65-12-11. Inspection fees. The owner or user of a boiler required by this chapter to be inspected by the boiler inspector shall pay to the bureau, upon completion of inspection, fees, or a combination of fees, which must be determined annually by the bureau. The bureau may determine and annually adjust a fee scale for the internal inspection of power boilers, internal inspections of low pressure heating boilers, external inspections of all boilers, and inspection of boilers used exclusively for exhibition purposes.

Not more than seventy-five dollars may be charged or collected for any and all inspections of any boiler in any one year except for special inspections made upon request. All other inspections made by the boiler inspector, including shop inspections and reviews and special inspections when requested by the owner or user of a boiler, must be charged for according to the current fee scale applicable to an internal inspection plus any additional expenses incurred in connection with the inspection at a rate not to exceed one hundred eighty-five dollars per day or one hundred dollars per half day of four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by sections 44-08-04 and 54-06-09.

The bureau shall charge a fee of ten dollars for each certificate of inspection issued as the result of inspections authorized under section 65-12-05. The fees are the liability of the insurance company or self-insured company and must be paid in accordance with rules established by the bureau.

Approved March 29, 1989
Filed March 30, 1989

VETOED MEASURES

CHAPTER 775

HOUSE BILL NO. 1071
(Dorso)

IMPORTER FOR USE TAX COLLECTION AGREEMENTS

AN ACT to create and enact a new subsection to section 57-43.1-01, two new sections to chapter 57-43.1, a new subsection to section 57-43.2-01, and two new sections to chapter 57-43.2 of the North Dakota Century Code, relating to cooperative agreements that may be entered into by the registrar of motor vehicles with other states for exchange of information and auditing of users of motor fuels and special fuels used in fleets of motor vehicles that operate interstate and collection and administration of importer for use tax provisions by the registrar of motor vehicles; to amend and reenact sections 57-43.1-36, 57-43.1-37, 57-43.1-38, 57-43.1-39, 57-43.1-40, 57-43.1-41, 57-43.1-43, 57-43.2-29, 57-43.2-30, 57-43.2-31, 57-43.2-32, 57-43.2-33, 57-43.2-34, and 57-43.2-36 of the North Dakota Century Code, relating to collection and administration of importer for use taxes by the registrar of motor vehicles; and to provide an effective date.

VETO

April 18, 1989

The Honorable William Kretschmar
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1071 provides for the implementation of the interstate fuel tax agreement.

Amendments are being prepared to Senate Bill 2243 to make the language currently in this bill compatible with the Department of Transportation bill language and to combine, for two years, the expertise of the offices of the Motor Vehicle Registrar and the Tax Commissioner to develop the program.

That language will be helpful and a technical improvement over the language currently in House Bill 1071.

Therefore, I veto House Bill 1071.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-43.1-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Registrar" means the registrar of motor vehicles.

SECTION 2. A new section to chapter 57-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Administration and collection of importer for use taxes by registrar. The registrar shall administer the importer for use taxes under the provisions of sections 57-43.1-33 through 57-43.1-43 and, for the purposes of the importer for use tax provisions, shall have all of the authority provided to the tax commissioner under sections 57-43.1-01 through 57-43.1-32.

SECTION 3. AMENDMENT. Section 57-43.1-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-36. Importer for use license required. Before any person imports fuel into this state in the fuel supply tank of any motor vehicle, that person shall file application for and obtain an importer for use license. Persons exempted from the tax levied under section 57-43.1-33 are not required to obtain such license. All applications for an importer for use license must be on forms furnished by the commissioner registrar and must contain such information as the commissioner registrar requires.

SECTION 4. AMENDMENT. Section 57-43.1-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-37. Issuance and display. If the commissioner registrar finds the statements in the application to be true, and if the commissioner registrar is satisfied that the application is made in good faith, the commissioner registrar shall issue to the applicant an importer for use license bearing a distinctive number and specifying the terms of the license. The license or a photocopy of the license must be carried in the passenger compartment of each motor vehicle operated by each importer for use at all times when the motor vehicle is in this state.

SECTION 5. AMENDMENT. Section 57-43.1-38 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-38. Assignment forbidden. A license issued by the commissioner registrar pursuant to this chapter is not subject to assignment or transfer, nor is such a license either a franchise or irrevocable.

SECTION 6. AMENDMENT. Section 57-43.1-39 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-39. Revocation, cancellation, and surrender of importer for use license. An importer for use license issued by the commissioner registrar is in force until the license is suspended, surrendered, or revoked for cause by the commissioner registrar. The commissioner registrar, upon

showing of failure to comply with the provisions of this chapter or rules adopted by the commissioner or the registrar under this chapter, may suspend or revoke any license issued under this chapter upon five days' notice to the grantee and on opportunity to be heard. If an importer for use license has been revoked for cause, the commissioner registrar may reinstate such license upon payment of a fifty dollar fee.

SECTION 7. AMENDMENT. Section 57-43.1-40 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-40. Occasional trip permits. Any person who occasionally makes trips into or through North Dakota and elects to secure occasional trip permits as provided in this section is exempt from the licensing requirements imposed upon importers for use. The word "occasionally" means no more than one trip in any seventy-two-hour period into or through the state. The commissioner registrar or the commissioner's registrar's agent shall issue occasional trip permits for a fee of fifteen dollars per trip pursuant to regulations and procedures prescribed by the commissioner registrar.

SECTION 8. AMENDMENT. Section 57-43.1-41 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-41. Authorization of the commissioner registrar. The commissioner registrar may issue authorization relieving fuel dealers of the duty of collecting the tax imposed under this chapter and chapter 57-43.2 from persons who are licensed as importers for use, and who consistently purchase from North Dakota fuel dealers more fuel than is consumed in the propulsion of their motor vehicles in this state.

SECTION 9. AMENDMENT. Section 57-43.1-43 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.1-43. Importer for use tax, reports, payments, records, penalties, disposition of funds, audits, and assessments.

1. Importers for use shall file a quarterly tax return with the commissioner registrar on forms prescribed by the commissioner registrar to determine the amount of tax liability or credit under this chapter. The importer for use shall file the return no later than the last day of the month next succeeding the last calendar month in the quarter. Importers for use shall be assessed penalty and interest and are subject to recordkeeping as provided in this chapter. The importer for use tax collected must be distributed as provided in this chapter.
2. The commissioner registrar shall audit the returns and make necessary assessments pursuant to the procedures and limitations provided for in section 57-43.1-17.

SECTION 10. A new section to chapter 57-43.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cooperative agreements between states.

1. The registrar may enter into cooperative agreements with other states for exchange of information and auditing of users of motor

fuels used in fleets of motor vehicles operated or intended to operate interstate. An agreement or amendment to an agreement is not effective until filed in writing with the registrar.

2. An agreement under this section may provide for determining the base state for users, users' records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining the uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of motor fuel taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.
3. The registrar, may, as required by the terms of the agreement, forward to officers of another state any information in the registrar's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuels by any person. The registrar may disclose to officers of another state the location of officers, motor vehicles, and other real and personal property of users of motor fuels.
4. An agreement may provide for each state to audit the records of persons based in the state, to determine if the motor fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the state, to each state in which the person has taxable use of motor fuels. For persons not based in this state and who have taxable use of motor fuel in this state, the registrar may serve the audit findings received from another state, in the form of an assessment, on the person as though an audit was conducted by the registrar.
5. Any agreement entered under this section does not preclude the registrar from auditing the records of any person covered by the provisions of this chapter.
6. The provisions of any agreement entered into under this section prevail over any conflicting rules adopted by the registrar.

SECTION 11. A new subsection to section 57-43.2-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

"Registrar" means the registrar of motor vehicles.

SECTION 12. A new section to chapter 57-43.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Administration and collection of imported for use taxes by registrar. The registrar shall administer the importer for use taxes under the provisions of sections 57-43.2-26 through 57-43.2-36 and, for the purposes of the importer for use tax provisions, shall have all of the authority of the tax commissioner under sections 57-43.2-01 through 57-43.2-25.

SECTION 13. AMENDMENT. Section 57-43.2-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-29. Importer for use license required. Before any person imports fuel into this state in the fuel supply tank of any motor vehicle, that person shall file application for and obtain an importer for use license. Persons exempted from the tax levied under section 57-43.2-26 are not required to obtain such license. All applications for an importer for use license must be on forms furnished by the commissioner registrar and must contain such information as the commissioner registrar requires. If the license required by section 57-43.1-38 has been obtained, no license is required pursuant to this section.

SECTION 14. AMENDMENT. Section 57-43.2-30 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-30. Issuance and display. If the commissioner registrar finds the statements in the application to be true, and if the commissioner registrar is satisfied that the application is made in good faith, the commissioner registrar shall issue to the applicant an importer for use license bearing a distinctive number and specifying the terms of the license. The license or a photocopy of the license must be carried in the passenger compartment of each motor vehicle operated by each importer for use at all times when the motor vehicle is in this state.

SECTION 15. AMENDMENT. Section 57-43.2-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-31. Assignment forbidden. A license issued by the commissioner registrar pursuant to this chapter is not subject to assignment or transfer, nor is such a license either a franchise or irrevocable.

SECTION 16. AMENDMENT. Section 57-43.2-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-32. Revocation, cancellation, and surrender of importer for use license. An importer for use license issued by the commissioner registrar is in force until the license is suspended, surrendered, or revoked for cause by the commissioner registrar. The commissioner registrar, upon showing of failure to comply with the provisions of this chapter or rules adopted by the commissioner or registrar under this chapter, may suspend or revoke any license issued under this chapter upon five days' notice to the grantee and on opportunity to be heard. If an importer for use license has been revoked for cause, the commissioner registrar may reinstate such license upon payment of a fifty dollar fee.

SECTION 17. AMENDMENT. Section 57-43.2-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-33. Occasional trip permits. Any person who occasionally makes trips into or through North Dakota and elects to secure occasional trip permits as provided in this section is exempt from the licensing requirements imposed upon importers for use. The word "occasionally" means no more than one trip in any seventy-two-hour period into or through the state. The commissioner registrar or the commissioner's registrar's agent shall issue occasional trip permits for a fee of fifteen dollars per trip pursuant to regulations and procedures prescribed by the commissioner registrar.

SECTION 18. AMENDMENT. Section 57-43.2-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-34. Authorization of the ~~commissioner~~ registrar. The ~~commissioner~~ registrar may issue authorization relieving fuel dealers of the duty of collecting the tax imposed under this chapter and chapter 57-43.1 from persons who are licensed as importers for use, and who consistently purchase from North Dakota fuel dealers more fuel than is consumed in the propulsion of their motor vehicles in this state.

SECTION 19. AMENDMENT. Section 57-43.2-36 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-43.2-36. Importer for use tax reports, payments, records, penalties, disposition of funds, audits, and assessments.

1. Importers for use shall file a quarterly tax return with the ~~commissioner~~ registrar on forms prescribed by the ~~commissioner~~ registrar to determine the amount of tax liability or credit under this chapter. The importer for use shall file the return no later than the last day of the month next succeeding the last calendar month in the quarter. Importers for use shall be assessed penalty and interest and are subject to recordkeeping as provided in this chapter. The importer for use tax collected must be distributed as provided in this chapter.
2. The ~~commissioner~~ registrar shall audit the returns and make necessary assessments pursuant to the procedures and limitations provided for in section 57-43.2-14.

SECTION 20. A new section to chapter 57-43.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cooperative agreements between states.

1. The registrar may enter into cooperative agreements with other states for exchange of information and auditing of users of special fuels used in fleets of motor vehicles operated or intended to operate interstate. An agreement or amendment to an agreement is not effective until filed in writing with the registrar.
2. An agreement under this section may provide for determining the base state for users, users' records requirements, audit procedures, exchange of information, persons eligible for tax licensing, defining qualified motor vehicles, determining if bonding is required, specifying reporting requirements and periods including defining the uniform penalty and interest rates for late reporting, determining methods for collecting and forwarding of special fuel taxes and penalties to another jurisdiction, and other provisions as will facilitate the administration of the agreement.
3. The registrar, may, as required by the terms of the agreement, forward to officers of another state any information in the registrar's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of special fuels by any person. The registrar may disclose to officers of another state the location of officers, motor vehicles, and other real and personal property of users of special fuels.

4. An agreement may provide for each state to audit the records of persons based in the state, to determine if the special fuel taxes due each state are properly reported and paid. Each state shall forward the findings of the audits performed on persons based in the state, to each state in which the person has taxable use of special fuels. For persons not based in this state and who have taxable use of special fuel in this state, the registrar may serve the audit findings received from another state, in the form of an assessment, on the person as though an audit was conducted by the registrar.
5. Any agreement entered under this section does not preclude the registrar from auditing the records of any person covered by the provisions of this chapter.
6. The provisions of any agreement entered into under this section prevail over any conflicting rules adopted by the registrar.

SECTION 21. EFFECTIVE DATE. This Act becomes effective on July 1, 1990.

Disapproved April 18, 1989
Filed April 21, 1989

CHAPTER 776

HOUSE BILL NO. 1076
(Representatives Wentz, Payne)
(Senator Dotzenrod)

INJURY REPORTS

AN ACT to amend and reenact subsections 1 and 2 of section 43-17-41 of the North Dakota Century Code, relating to duty of physicians and others to report injuries.

VETO

April 7, 1989

The Honorable William Kretschmar
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1076 would amend N.D.C.C. Section 43-17-41 which presently provides for the duty of physicians or other medical or mental health professionals to report any person they treat that may be suffering from any self-inflicted injuries or injuries inflicted by another in violation of any criminal law. House Bill 1076 would exempt from this reporting requirement a suspected violation of the DUI law as long as there are no additional persons injured, other than the driver.

Driving while under the influence of alcohol or other drugs is a very serious offense in our state as evidenced by the nearly 3,000 persons arrested per year for this violation. Furthermore, nearly one-half of all traffic fatalities in our state continue to have measurable amounts of alcohol or other drugs. To eliminate the responsibility of physicians and other medical and mental health professionals from reporting these offenders could seriously jeopardize our DUI enforcement efforts by delaying or even preventing a timely investigation of the facts and circumstances of an automobile accident.

Furthermore, forcing medical professionals to determine the possibility of other victims being at risk is not appropriate. Timely investigations of the scene of an accident save relevant evidence and more importantly enable a quick on-site investigation to accurately determine whether other individuals were injured.

Finally, N.D.C.C. Section 43-17-41, without these amendments, has served the criminal justice community well since it was initially enacted in 1977.

Therefore, I veto House Bill 1076.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 43-17-41 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Any physician or other medical or mental health professional, who ~~has under his charge or care or~~ performs any professional services for any person suffering from any wound, injury, or other physical trauma inflicted by ~~his~~ that person's own act or by the act of another by means of a knife, gun, or pistol, or which ~~he~~ the health care professional has reasonable cause to suspect was inflicted in violation of any criminal law of this state, shall as soon as practicable report the same to the sheriff ~~or state's attorney~~ of the county ~~or a police officer of the city~~ in which ~~such care was~~ the professional services were rendered. The report shall state the name of the injured person, if known, ~~his~~ that person's whereabouts, and the character and extent of ~~his~~ that person's injuries. However, any report concerning injuries sustained from the operation of a motor vehicle need not be filed if there is a suspected violation of section 39-08-01 and there are no persons injured, other than the driver.
2. The reports mandated by this section ~~shall~~ must be made as soon as practicable and may be either oral or in writing. Oral reports ~~shall~~ must be followed by written reports within forty-eight hours if so requested by the sheriff or ~~state's attorney~~ police officer to whom the oral report is originally made.

Disapproved April 7, 1989
Filed April 13, 1989

CHAPTER 777

HOUSE BILL NO. 1228
(Ulmer)

HIGHER EDUCATION HANDICAPPED ACCESS APPROPRIATION

AN ACT to amend and reenact section 48-02-19 of the North Dakota Century Code, relating to access by the handicapped to institutions of higher education; to provide an appropriation; and to provide legislative intent regarding the funding of handicapped access projects in future bienniums.

VETO

April 11, 1989

The Honorable William Kretschmar
Speaker of the House
House Chambers
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

I have signed HB 1228, the substance of which I heartily endorse. Section 2, the appropriation section, however, I believe could be better covered under the bonding authority provided in another bill.

Therefore, I am vetoing Section 2 of this bill and I am recommending the inclusion of funding authority in a bonding bill.

Sincerely,

George A. Sinner
Governor

Disapproved April 11, 1989
Filed April 17, 1989

NOTE: For the full text of House Bill No. 1228, containing section 2, see chapter 563.

CHAPTER 778

HOUSE BILL NO. 1254

(Representatives D. Olsen, A. Olson, Hoffner)
(Senators O'Connell, Tennefos, Tallackson)

TEACHER PERSONNEL FILE CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 15-38.2 of the North Dakota Century Code, relating to access to teachers' personnel files; to amend and reenact sections 15-29-10 and 15-51-10 of the North Dakota Century Code, relating to school district and school board records; and to provide a penalty.

VETO

April 10, 1989

The Honorable William Kretschmar
Speaker of the House
House Chambers
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

Quality education is fundamental to economic and social progress.

Around the country, states are using open enrollment, teacher and student testing, greater educational requirements for teachers and a myriad of other methods to promote accountability, to ensure that education continues to serve our needs in an era of global competition.

In recent years, national studies on education reform, particularly those of the National Governors' Association and the Carnegie Foundation, have emphasized the need for accountability. Teachers, administrators, school boards and students need to be accountable to parents and the public for performance -- or lack of performance.

Open records help assure the accountability in North Dakota. And, if there have been any abuses resulting from open records, they have been few and infrequent. In fact, in some instances, an individual's rights and interests are protected by keeping such records open. Closing records implies that there is something to hide. No such implication is justified in North Dakota.

Further, there are many other public employees who may want the same secrecy sought in this bill. If the trend in this bill continues, no public

employee's records will be available for scrutiny by the public, which those employees serve.

In the end, this is not so much an issue of privacy vs. the public's right to know as it is an issue of accountability. And one way to help ensure accountability is that teachers' and administrators' records and school board meeting records remain open for public review. The records are, after all, not 'personal' files, but 'personnel' files. Given the critical role of education and the high percentage of public money expended on it, this bill moves in exactly the wrong direction.

Clearly we must get better pay for teachers. To do that, public confidence must be ensured.

Therefore, I veto HB 1254.

Sincerely,

George A. Sinner
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-29-10 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-29-10. District records open to examination - Records as evidence. ~~The~~ Except as provided in section 2 of this Act, the records, vouchers, and papers of the district are open to examination by any taxpayer of the district. These records, or a transcript thereof certified by the business manager, must be received in all courts as prima facie evidence of the facts therein set forth.

SECTION 2. A new section to chapter 15-38.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

Teacher's personnel file - Access - Penalty. The personnel file of a teacher is not open for public inspection under section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. This section does not prevent a teacher with respect to that teacher's file or that teacher's direct supervisor, principal, superintendent, or school board from having access to a teacher's file. As used in this section, teacher includes all teachers, principals, and superintendents in all public school districts within this state, and all persons employed in teaching in any state institution, including state institutions of higher education. Any person who violates this section is guilty of an infraction and is not subject to the penalty provided by section 12.1-13-01.

SECTION 3. AMENDMENT. Section 15-51-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-51-10. Secretary, duties - Record as evidence - Inspection. The ~~said~~ board of education shall elect a secretary, who shall hold ~~his~~ office ~~during~~ at the pleasure of the board, and whose compensation ~~shall~~ must be fixed by the board. The secretary shall keep a record of the proceedings of the board, and perform such other duties as the board may prescribe. The

said record of the proceedings or a transcript thereof of the record, certified by the secretary and attested by the seal of the board, shall must be received in all courts as prima facie evidence of the facts therein set forth, and such record and all the books, accounts, vouchers, and papers of said the board, at all times, shall be except as provided in section 2 of this Act, are subject to the inspection of the city council or any committee thereof or any taxpayer, or resident of said city.

Disapproved April 10, 1989
Filed April 13, 1989

CHAPTER 779

HOUSE BILL NO. 1320
(R. Berg)

GROUNDS FOR EVICTION

AN ACT to create and enact a new subsection to section 33-06-01 and a new section to chapter 33-06 of the North Dakota Century Code, relating to grounds for eviction and eviction orders.

VETO

April 14, 1989

The Honorable William Kretschmar
Speaker of the House
House Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1320 amends Section 33-06-01 of the North Dakota Century Code to allow the eviction of a tenant if there is a direct or indirect disturbance of the peace. It also provides that a court must evict the tenant immediately, unless the eviction would cause a substantial hardship to the tenant. Upon a showing of substantial hardship, the court may allow the tenant to remain on the premises for a reasonable period not to exceed fifteen days if the eviction is for failure to pay rent, and, in all other cases, the period before eviction must not exceed five days.

The use of the word "indirect", as it refers to a disturbance of the peace, is very ambiguous. The nature of apartment living lends itself to a variety of situations that could be construed as "indirect" disturbances. It is not difficult to imagine a number of circumstances that could be considered "indirect" disturbances but, in fairness, would not warrant the severe remedy of an eviction.

An ambiguity of this nature could lead to abuse by both landlords and other tenants. Rather than impose this uncertainty on all landlords and tenants, it is better to allow them the opportunity to tailor the terms and conditions of a lease and choose the appropriate remedies for a breach.

The problem of ambiguity is aggravated by the provision demanding the court to limit the time frame in which the eviction must take place. The varied circumstances surrounding the eviction require flexibility, not a rigid rule. I have great confidence in the ability of the judges of North Dakota to

fashion a remedy that will serve the interests of justice and protect landlords and tenants. I do not believe it is proper to tie the hands of judges, particularly where it could lead to such serious consequences. The eviction of a tenant from his or her home under any circumstance may have a significant impact on the life of the tenant and a tenant's family and should be given careful consideration.

Therefore, I veto HB 1320.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 33-06-01 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

A party directly or indirectly disturbs the peace of other tenants or residents.

SECTION 2. A new section to chapter 33-06 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Judgment of eviction - Execution. If the court finds for the plaintiff, the court shall immediately enter judgment that the plaintiff have possession of the premises. The court shall immediately issue a writ of restitution, unless the defendant demonstrates that immediate restitution of the premises would work a substantial hardship upon the defendant or the defendant's family. Upon a showing of substantial hardship, the court may allow the tenant to remain on the premises for a reasonable period not to exceed fifteen days if the eviction is for failure to pay rent, and in all other cases, not to exceed five days.

Disapproved April 14, 1989
Filed April 20, 1989

CHAPTER 780

HOUSE BILL NO. 1520
(Melby, Huether)

HEALTH COUNCIL MEMBERSHIP

AN ACT to amend and reenact section 23-01-02 of the North Dakota Century Code, relating to the health council membership.

VETO

March 22, 1989

The Honorable William Kretschmar
Speaker of the House
House Chamber
State Capitol Building
Bismarck, North Dakota 58505

Dear Mr. Speaker:

House Bill 1520 adds a representative of the state long-term care association to the Health Council, thereby increasing the number of health care health council members from 15 to 16 and increasing the number of provider representatives from eight to nine.

I have no objection whatsoever to having a long-term care association representative on the Health Council.

However, the Health Council, with 15 members, is currently large enough. Continuing to add new members will simply make the Health Council an unwieldy body.

In addition, with 15 members, the Health Council now has one more provider than consumer. I would much prefer to see a consumer dominance on the Health Council. This bill adds to the provider dominance of the Health Council.

In an era when health care costs continue to increase significantly, when health care access is becoming a major problem and when thousands of North Dakotans are unable to even afford health insurance, consumer concerns and influence should be strengthened, not lessened.

Finally, having a council consisting of an even-number of members would make it even more difficult by causing tie votes without authority for the state health officer or anyone else to break ties.

Therefore, I veto House Bill 1520.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

23-01-02. Health council - Members, terms of office, vacancies, compensation, officers, meetings. The health council consists of ~~fifteen~~ sixteen members appointed by the governor in the following manner: Two persons ~~shall~~ must be appointed from a list of four submitted by the state hospital association, two persons ~~shall~~ must be appointed from a list of four submitted by the state medical association, one person ~~shall~~ must be appointed from a list of two submitted by the state dental association, one person ~~shall~~ must be appointed from a list of two submitted by the state optometric association, one person ~~shall~~ must be appointed from a list of two submitted by the state nurses association, one person ~~shall~~ must be appointed from a list of two submitted by the state pharmaceutical association, one person must be appointed from a list of two submitted by the state long-term care association, and there ~~shall~~ must be appointed seven persons who are consumers of health care services and not employed in the health care field. One health care consumer member must be a representative of the business community, one health care consumer member must be a representative of the agriculture community, one health care consumer member must be a representative of organized labor, and one health care consumer member must be a representative of elderly citizens. On the expiration of the term of any member, the governor, in the manner provided by this section, shall appoint for a term of three years, persons to take the place of members whose terms on the council are about to expire. The officers of the council ~~shall~~ must be elected annually. The following persons shall serve in an advisory capacity to the health council: the state health officer, the attorney general, the director of institutions, the state fire marshal, the executive secretary of the state board of nursing, the executive director of the department of human services, the executive director of the North Dakota Indian affairs commission, and any other persons the governor may designate. The council shall meet at least twice each year and at other times as the council or its chairman may direct. The council shall have as standing committees a health committee and a hospital committee and any other committees the council may find necessary. The health committee consists of one of the representatives of the state medical association, one of the representatives of the state hospital association, the representative of the state dental association, the representative of the state optometric association, the representative of the state nurses association, the representative of the state long-term care association, and two of the health care consumer members. The hospital committee consists of the representatives of the state hospital association, one of the representatives of the state medical association, the representative of the state nurses association, and two of the health care consumer members. The members of these committees ~~shall~~ must be selected by the chairman of the health council from its own membership. The chairman ~~shall~~ have the responsibility of assigning to the special committees problems relating to the respective fields. The members of the council are entitled to receive the same compensation per day as provided in section 54-35-10 for members of the legislative council and their necessary mileage and travel expenses as

provided in sections 54-06-09 and 44-08-04 while attending council meetings, or in the performance of such special duties as the council may direct. The per diem and expenses ~~shall~~ must be audited and paid in the manner in which the expenses of state officers are audited and paid. The compensation provided for in this section may not be paid to any member of the council who received salary or other compensation as a regular employee of the state, or any of its political subdivisions, or any institution or industry operated by the state.

Disapproved March 22, 1989
Filed April 13, 1989

CHAPTER 781

SENATE BILL NO. 2395
(Senators Nalewaja, Tennesfos)
(Representative Rydell)

HOME CARE MINIMUM WAGE

AN ACT to create and enact a new section to chapter 34-06 of the North Dakota Century Code, relating to the application of wage and hour standards to persons providing companionship services, personal care services, and family home care.

VETO

April 15, 1989

The Honorable Lloyd B. Omdahl
President of the Senate
Senate Chamber
State Capitol
Bismarck, North Dakota 58505

Dear Mr. President:

Senate Bill 2395 provides exemptions from minimum wage and hour standards for certain categories of workers.

It is probably appropriate to clarify that family members who provide family home care services for relatives who live in their homes are exempt from minimum wage and hour standards. And I could support such legislation.

This legislation, however, goes too far. Subsection 2 of this bill also exempts from any minimum wage and hour standards those who provide personal care services under county contracts. It could be read to exempt from any and all minimum wage and hour standards even private individuals, who under county contracts, hire other workers to provide personal care or family home care services.

Such provisions would probably save money for the state and political subdivisions but at the expense of a minimum standard of living for those decent enough to provide these much-needed services.

While I appreciate the concerns this bill attempts to address, I strongly believe that the state and political subdivisions need to provide the best example they can in this area.

Therefore, I veto Senate Bill 2395.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 34-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exemption for companionship and personal care services and family home care.

1. Employees who provide companionship services for individuals who, because of age or disability, are unable to care for themselves are exempt from any minimum wage and hour standards that may be prescribed under this chapter, to the extent that those companionship services are provided by an employee from ten p.m. to nine a.m., up to a total of eight hours, during which time the employee is available to perform duties for the aged or disabled individual, but is free to sleep and otherwise engage in normal private pursuits in the aged or disabled individual's home. Employees who provide companionship services are not entitled to any overtime premium that may be prescribed under this chapter.
2. Individuals who provide personal care services or family home care under written contract with a county social service board are exempt from any minimum wage and hour standards that may be prescribed under this chapter.
3. As used in this section:
 - a. "Companionship services" means those services that provide fellowship, care, and protection for individuals who, because of advanced age or physical or mental disabilities, cannot care for their own needs. Those services may include household work related to the care of the aged or disabled person, including meal preparation, bed making, washing of clothes, and other similar services, and may include the performance of general household work if that work does not exceed twenty percent of the total weekly hours worked. "Companionship services" do not include services relating to the care and protection of the aged or disabled which require and are performed by trained personnel, including a registered or practical nurse, and do not include individuals who provide care and protection for infants and young children who are not physically or mentally disabled.
 - b. "Family home care" means family home care as defined in section 50-06.2-02.
 - c. "Personal care services" means personal care services as defined under the home and community-based waiver for the aged and disabled, secured by the department of human services pursuant to 42 U.S.C. 1396n(c).

Disapproved April 15, 1989

CHAPTER 782

SENATE BILL NO. 2332
(Senators Heinrich, Freborg, Nalewaja)
(Representatives Wentz, D. Larson)

MANDATORY CRIMINAL SENTENCING

AN ACT to amend and reenact subsection 9 of section 12.1-32-02, sections 12.1-32-02.1, 19-03.1-23, and 54-21-25 of the North Dakota Century Code, relating to sentencing alternatives, prison terms for certain offenders, penalties for unlawful manufacture, delivery, or possession of controlled substances, and authority to contract with other governmental agencies for prisoners and juvenile delinquents; to provide a penalty; and to provide an effective date.

VETO

April 28, 1989

Mr. Jim Kusler
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Kusler:

Senate Bill 2332 requires minimum and enhanced sentences in a variety of drug-related cases.

I firmly believe that judges are in the best position to address the unique cases that may come before them. Judges must impose strict sentences on those who are so evil as to maliciously prey on our children and young people, and they currently have all of the authority they need to do so.

However, I am especially concerned about first-time offenders for whom a jail or prison sentence, instead of providing any sort of rehabilitation, may only serve to confirm in them their worst instincts and result in lifetime criminals. All of us know that there are many cases--many people--who could have been saved had some form of alternative sentence been allowed and provided.

I believe in a system in which the judges who are present at trial, who have heard the evidence, who have available to them a pre-sentence investigation report and who have the input of the victims are able to make an appropriate decision which conforms to the criminal, the crime and the victim.

Furthermore, no appropriation has been provided to address the significant increase in prison sentences which are likely to result from this Bill. Corrections budgets in other states which have enacted mandatory sentences have gone out of control.

Therefore, I veto Senate Bill 2332.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 12.1-32-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. A person convicted of a felony who is sentenced to imprisonment for not more than one year ~~shall be~~ is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment, except a person convicted of violating subdivision b or c of subsection 1 of section 19-03.1-23.

SECTION 2. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12.1-32-02.1. Minimum prison terms for armed offenders. Notwithstanding any other ~~provisions~~ provision of this title, minimum terms of imprisonment shall be imposed upon an offender and served without benefit of parole when, in the course of committing an offense, he the offender inflicts or attempts to inflict bodily injury upon another, ~~or~~ threatens or menaces another with imminent bodily injury with a dangerous weapon, an explosive, or a firearm, or possesses or has within immediate reach and control a firearm, dangerous weapon, explosive, or destructive device while in the course of committing an offense provided by subsection 1 or 2 of section 19-03.1-23. Such minimum penalties shall apply only when possession of a dangerous weapon, an explosive, or a firearm has been charged and admitted or found to be true in the manner provided by law, and shall be imposed as follows:

1. If the offense for which the offender is convicted is a class A or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
2. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

This section applies even when being armed is an element of the offense for which the offender is convicted.

SECTION 3. AMENDMENT. Section 19-03.1-23 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

19-03.1-23. Prohibited acts A - Mandatory imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for any person to willfully manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, ~~provided, that, but~~ any person ~~whose conduct is in violation of~~ who violates section 12-46-24, 12-47-21, or 12-51-11 ~~shall~~ may not be prosecuted under this subsection. ~~Any~~ Except when a person delivers a controlled substance without receiving remuneration or agreeing to receive remuneration for the controlled substance, the court may not suspend execution or defer imposition of any sentence imposed under subdivision a, b, or c of this subsection. However, the court may suspend execution of no more than one-half of any sentence imposed for a first offense under subdivision a, b, or c of this subsection. Subject to this requirement, any person, who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony and must be sentenced:
 - (1) For a first offense, to imprisonment for at least a year and a day.
 - (2) For a second offense, to imprisonment for at least five years.
 - (3) For a third or subsequent offense, to imprisonment for twenty years.
 - b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony. Any person found guilty under this subdivision must be sentenced:
 - (1) For a first offense, to imprisonment for at least eight months.
 - (2) For a second offense, to imprisonment for at least three years.
 - (3) For a third or subsequent offense, to imprisonment for ten years.
 - c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
 - (1) For a first offense, to imprisonment for at least six months.
 - (2) For a second offense, to imprisonment for at least one year.
 - (3) For a third or subsequent offense, to imprisonment for five years.
 - d. A substance classified in schedule V, is guilty of a class A misdemeanor.

2. Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance; ~~provided, that, but any person whose conduct is in violation of who violates~~ section 12-46-24, 12-47-21, or 12-51-11 ~~shall~~ may not be prosecuted under this subsection. Any person, who violates this subsection with respect to:
 - a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.
 - b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
3. In addition to any other penalty imposed under this section, a person who violates this chapter is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
 - a. Any person who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school is subject to a four-year term of imprisonment. For a second or subsequent offense, the sentencing term required to be imposed must be eight years.
 - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least four years, to be served without benefit of parole. For a second or subsequent offense, the defendant must be sentenced to imprisonment for at least eight years, to be served without benefit of parole. It is not a defense that the defendant did not know the age of a person protected under this subdivision.
 - c. The court may not defer imposition of any sentence imposed under this subsection, but the court may suspend execution of no more than one-half of any sentence imposed under this subsection.
4. A person at least twenty-one years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to unlawfully transport, carry, sell, give away, prepare for sale, or peddle any controlled substance is guilty of a class B felony and must be sentenced:
 - a. For a first offense, to imprisonment for at least four years.

- b. For a second or subsequent offense, to imprisonment for at least five years.
- c. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. A violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment.
6. It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his the practitioner's professional practice, or except as otherwise authorized by this chapter; provided, that, but any person whose conduct is in violation of who violates section 12-46-24, 12-47-21, or 12-51-11 shall may not be prosecuted under this subsection. Any person who violates this subsection is guilty of a class C felony, but if the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public vocational school, the person is guilty of a class B felony; except that any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana, shall be is guilty of a class A misdemeanor; and any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana shall be is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle shall be is guilty of a class A misdemeanor.
7. A person who violates this chapter must undergo a drug addiction evaluation by an appropriate licensed addiction treatment program. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. The evaluation must be submitted to the court for consideration when imposing punishment for a violation of this chapter.
- ← 8. Notwithstanding the provisions of section 19-03.1-30, whenever a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana and a judgment of guilt is entered, a court, upon motion, shall expunge that conviction from the record if the person is not subsequently convicted within two years of a further violation of this chapter and has not been convicted of any other criminal offense.

SECTION 4. AMENDMENT. Section 54-21-25 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-21-25. Authority to contract with other governmental agencies for prisoners and juvenile delinquents. If the director of ~~institutions~~ the department of corrections and rehabilitation determines that adequate or suitable state facilities or services are not available for adult inmates or juvenile delinquents under ~~his~~ the director's control ~~he~~ the director may contract for same with the proper authorities of the United States, Canada, and any of its governmental subdivisions, another state, another agency in this state or a political subdivision of this state, or with any private or public correctional or treatment facility or agency. The state shall reimburse such entities at an amount to be determined by the state based upon the services the state determines are required for the housing and treatment of the inmates. The director may also contract, without cost to the state, to provide services or facilities for persons held by any of the jurisdictions mentioned in this section. ~~An adult inmate or juvenile delinquent who is considered for transfer to another jurisdiction as herein provided; and who as an adult or as parent or guardian of a juvenile does not consent to the transfer; will be given notice of the pending transfer and a review by an institutional staff board including at least one member from the treatment staff; the security or housing staff; the administrative staff; and chaired by an individual designated by the director of institutions to determine the need and justification for a transfer. The findings of the review board will, if appropriate, be given to the adult inmate or juvenile delinquent or a representative or guardian; and in the case of adults; to the pardon board; and in the case of juveniles; to the designated juvenile court staff for their approval of the requested transfer. If a treaty is in effect between the United States and a foreign country for the transfer and exchange of offenders, the director of institutions, upon recommendation of the warden and the approval of the governor, may on behalf of the state under the terms of the treaty transfer or exchange offenders and take any action necessary for the state to participate in the treaty.~~

SECTION 5. EFFECTIVE DATE. This Act becomes effective on July 1, 1990.

Disapproved April 28, 1989
Filed April 28, 1989

CHAPTER 783

SENATE BILL NO. 2193
(Maxson)

INDEPENDENT ADMINISTRATIVE HEARING OFFICERS

AN ACT to create and enact a new section to chapter 28-32 of the North Dakota Century Code, relating to the appointment of independent administrative hearing officers.

VETO

April 28, 1989

Mr. Jim Kusler
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Kusler:

Senate Bill 2193 would provide for the appointment of an independent hearing officer at the request of one of the parties to a hearing before an administrative agency.

North Dakota has no system of administrative law judges, and no such system has been created by law. Nor has an appropriation been made for such a system.

I realize that we may need a system which is perceived as more fair to those who appear at hearings before state agencies. Such a system would provide for hearing officers who are not employees of the administrative agencies whose cases they hear.

Therefore, I intend to work with the Attorney General, other elected officials and my appointees to set in motion a pilot program in which the administrative law judges would be separate from state agencies.

If we can find an efficient, fair system that will work and is affordable, we will put it in place on a limited basis and report our results to the next session.

Therefore, I veto Senate Bill 2193.

Sincerely,

GEORGE A. SINNER

Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-32 of the North Dakota Century Code is hereby created and enacted to read as follows:

Independent hearing officer - Request - Appointment.

1. An administrative agency shall inform a respondent in the notice for hearing of the right to an independent hearing officer assigned by the attorney general if the respondent so requests in writing to the agency and the attorney general at the time of answering a complaint. The complainant or the agency may also request the assignment of an independent hearing officer, if made in writing within twenty days after service of a complaint by the agency. The agency shall make such a request to the attorney general.
2. The attorney general shall assign an employee of the executive branch who is not employed by the agency involved in the hearing to act as hearing officer. A hearing officer must have demonstrated knowledge of administrative procedures, although does not need to be legally trained, and must be free of any bias or prejudice that would impair the officer's ability to function officially in a fair and objective manner. The attorney general shall assign hearing officers so that no undue burden is placed on the personnel of any one agency.
3. The attorney general shall adopt rules to govern the procedural conduct of all hearings conducted by a hearing officer assigned under this section. Such procedural rules for hearings are binding upon all agencies and supersede any agency procedural rules which may be in conflict.
4. Hearing officers assigned under this section may:
 - a. Preside over hearings and advise the agency on matters of law.
 - b. Administer oaths and affirmations.
 - c. Examine witnesses.
 - d. Rule upon offers of proof and receive evidence.
 - e. Regulate the course and conduct of the hearing.
 - f. Hold conferences, before or during the hearing, for the simplification of the issues and for such other purposes as the demands of justice require.
 - g. Rule on motions and dispose of procedural requests or similar matters.
 - h. Prepare recommended findings of fact and conclusions of law for the agency involved in a hearing, but any final decision as a result of the hearing must be made by the agency involved.

- i. Institute contempt proceedings as provided by this chapter.
 - j. Exercise such other powers as are granted hearing officers pursuant to this chapter.
5. This section does not apply to the public service commission, the industrial commission, the state personnel board, or the central personnel division.

Disapproved April 28, 1989
Filed April 28, 1989

CHAPTER 784

SENATE BILL NO. 2192
(Maxson)

ADMINISTRATIVE HEARING OFFICER CHANGE

AN ACT to amend and reenact section 28-32-05 of the North Dakota Century Code, relating to a change of an administrative hearing officer.

VETO

April 28, 1989

Mr. Jim Kusler
Secretary of State
State Capitol
Bismarck, North Dakota 58505

Dear Mr. Kusler:

Senate Bill 2192 provides for a change of hearing officer at the request of any of the parties to a hearing before an administrative agency, with certain exceptions.

I appreciate the concerns which this Bill addresses. My veto message on Senate Bill 2193 also addresses some of those concerns more specifically.

However, I believe that, without an administrative law judge system, this requirement would be unworkable for many state agencies. It is also likely that it would have budget impacts which could be significant and for which no appropriations have been provided. And it would certainly result in delays of hearings.

Therefore, I veto Senate Bill 2192.

Sincerely,

GEORGE A. SINNER
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-32-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

28-32-05. Rules of procedure - Complaint - Notice of hearing - Filing and service. The following rules of procedure shall be observed by all administrative agencies in proceedings in which the same are applicable:

1. The complainant shall prepare and file a clear and concise complaint with the agency having subject matter jurisdiction of a proceeding. The complaint shall contain a concise statement of the claims or charges upon which the complainant relies including reference to the statute or rule alleged to be violated, and the relief sought.
2. Upon filing of the complaint, the appropriate administrative agency shall serve a copy of the complaint and a notice for hearing upon the respondent personally or by certified mail, as the agency may direct, at least forty-five days before the time specified for hearing. Service may be waived in writing by the respondent, or the parties may agree upon a definite time and place for hearing with the consent of the agency having jurisdiction.
3. The notice for hearing ~~shall~~ must fix the time and place for trial upon the merits, must inform the respondent of the name of the officer, special examiner, chairman, or acting chairman before which the hearing is to be held, and ~~shall~~ must inform the respondent that an answer to the complaint must be served upon the complainant and agency giving the notice within twenty days after service of the complaint and notice for hearing, or the complaint will be deemed admitted, and the agency will enter such order as the facts and law may warrant. Except in proceedings before the public service commission, the industrial commission, the state personnel board, or the central personnel division, any party to the proceeding may obtain, without cause, one change of the officer, special examiner, chairman, or acting chairman before which the hearing is to be held. A demand for a change of the hearing officer must be made in writing to the appropriate administrative agency within ten days after service of the complaint and notice of hearing. Upon receipt of a timely demand for a change of the hearing officer, a new hearing officer must be assigned for the hearing, and notice of the new officer must be given to all parties. A demand for a change of the newly assigned hearing officer by a party not previously requesting a change of the hearing officer must be made within ten days of assignment. If necessary to allow adequate time for preparation for the hearing, the administrative agency may reschedule the hearing for a later date upon notice to all parties.
4. In an emergency the agency, in its discretion, may notice a proceeding for hearing upon the merits upon less than forty-five days' notice. Every party to such proceeding shall be given a reasonable time within which to serve an answer and to prepare for the hearing, which may be extended by the agency upon good cause being shown.
5. At the hearing, the respondent shall be afforded the same opportunity to present evidence and to examine and cross-examine witnesses as is permitted under section 28-32-06.

6. Unless otherwise precluded by law, informal disposition may be made of any contested case, or any issue therein, by stipulation, agreed settlement, consent order, or default subject to agency approval.
7. If the nature of the action does not involve a complaint and specific-named respondents, the above rules shall not apply. Unless specific provision for notice is otherwise provided for in this code or the rules of the agency, public notice of the hearing shall be given by publication in the official newspaper in the county or counties in which the subject matter involved is located. All rules must provide for at least fourteen days' notice before the hearing except in cases of emergency.

Disapproved April 28, 1989
Filed April 28, 1989

INITIATED MEASURE, APPROVED

CHAPTER 785

VETERANS' POSTWAR TRUST FUND

An initiated measure to create and enact a new section of the North Dakota Century Code, to provide for transfer of funds from the general fund to the veterans' postwar trust fund; and to amend and reenact section 37-14-14 of the North Dakota Century Code, relating to the veterans' postwar trust fund.

BE IT ENACTED BY THE PEOPLE OF NORTH DAKOTA:

SECTION I. Section 37-14-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

37-14-14. Veterans' postwar trust fund. The veterans' postwar trust fund shall be a permanent trust fund of the state of North Dakota and shall consist of moneys transferred or credited to the fund, pursuant to the provisions of this chapter and of other laws. The fund must be invested by the state treasurer in legal investments authorized by section 15-03-04. Investment of the fund shall be the responsibility of the state treasurer who shall have full authority to invest the fund only in those legal investments authorized by section 21-10-07. the fund and all All income received on from investments is are to be utilized in only for programs of benefit and service to veterans as defined in section 37-01-40, or their dependents, as determined and appropriated by the legislative assembly and such income is hereby appropriated to the administrative committee on veterans' affairs on a continuing basis for expenditure upon such programs as authorized by law.

SECTION II. A new section to the North Dakota Century Code shall be created and enacted.

In order to provide for the increasing needs of veterans and their dependents and to restore the veterans' postwar trust fund's principal balance to it's original level as established by the 1981 legislative assembly, the state treasurer shall transfer to the veterans' postwar trust fund on July 1 of each year or as soon thereafter as possible, for 5 successive years commencing on July 1, 1989, the sum of \$740,000 from the state's general fund or from such other sources as appropriated by the legislative assembly until a total of \$3,700,000 has been transferred.

Approved November 8, 1988

159,943 to 108,195

NOTE: This was measure No. 4 on the general election ballot.

INITIATED MEASURE, DISAPPROVED

CHAPTER 786

STATE-OPERATED LOTTERY

An initiated measure for the amendment of Section 25 of Article XI of the Constitution of North Dakota, relating to a state-operated lottery.

BE IT ENACTED BY THE PEOPLE OF NORTH DAKOTA:

Section 25. The legislative assembly shall not authorize any game of chance, ~~lottery~~, or gift enterprises, under any pretense, or for any purpose whatever. However, the legislative assembly may authorize by law bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations, civic and service clubs, or such other public-spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses. The legislative assembly shall establish a state operated lottery, the net proceeds of which shall go to the general fund. The lottery may be either operated separately by this state or jointly or in cooperation with one or more other states.

Disapproved June 14, 1988

43,951 to 61,331

NOTE: This was measure No. 3 on the primary election ballot.

REFERRED MEASURE, DISAPPROVED

CHAPTER 787

CABLE TELEVISION SALES TAX DISAPPROVED

Disapproval by referendum of sections 2, 3, and 5 of Senate Bill No. 2557 of the Fiftieth Legislative Assembly which provided for imposition of sales and use taxes on sales of cable television or other video programming services.

Disapproved June 14, 1988

23,497 to 81,622

NOTE: This was measure No. 4 on the primary election ballot.

CONSTITUTIONAL AMENDMENT, APPROVED

CHAPTER 788

FEDERAL LAND BANK TAXATION

Senate Concurrent Resolution No. 4047, chapter 785, 1987 Session Laws, proposed by the Fiftieth Legislative Assembly of the State of North Dakota, for the amendment of section 5 of article X of the Constitution of the State of North Dakota, relating to taxation of property owned by the United States when Congress has waived exemption of the property to allow imposition of property taxes and state oil and gas taxes or other taxes imposed in lieu of property taxes on minerals or property owned by the federal land bank and relating to taxation of state or local government property if exemption of the property is waived by the legislative assembly.

STATEMENT OF INTENT

This amendment provides that property of the United States is subject to state and local property taxes if Congress has waived exemption of the property to allow imposition of property taxes and state oil and gas taxes or other taxes imposed in lieu of property taxes on minerals or property owned by the federal land bank and relating to taxation of state or local government property if exemption of the property is waived by the legislative assembly.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 5 of article X of the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the next general election to be held in 1987 or 1988, in accordance with the provisions of section 16 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 5 of article X of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 5. Taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax. The ~~legislature~~ legislative assembly may by law exempt any or all classes of personal property from taxation and within the meaning of this section, fixtures, buildings and improvements of every character, whatsoever, upon land shall be deemed personal property. The property of the United States ~~and, to the extent immunity from taxation has not been waived by an act of Congress, property of the state, county, and municipal corporations,~~ to the extent immunity from taxation has not been waived by an act of the legislative assembly, and property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation. Except as restricted by this article, the ~~legislature~~ legislative assembly

may provide for raising revenue and fixing the situs of all property for the purpose of taxation. Provided that all taxes and exemptions in force when this amendment is adopted shall remain in force until otherwise provided by statute.

Approved November 8, 1988

143,922 to 107,912

NOTE: This was measure No. 3 on the general election ballot.

CONSTITUTIONAL AMENDMENTS, DISAPPROVED

CHAPTER 789

REFERRED MEASURE AMENDMENT OR REPEAL VOTE

Senate Concurrent Resolution No. 4005, chapter 781, 1987 Session Laws, proposed by the Fiftieth Legislative Assembly of the State of North Dakota, for the amendment of section 8 of article III of the Constitution of the State of North Dakota, relating to the requirement that a measure approved by the electors may not be repealed or amended by the legislative assembly for seven years except by a two-thirds vote.

STATEMENT OF INTENT

An initiated or referred measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house. This amendment would remove that prohibition for referred measures.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 8 of article III of the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of the State of North Dakota at the first statewide special election held following the passage of this resolution or, if no special election is held prior to it, at the primary election to be held in 1988, in accordance with the provisions of section 16 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 8 of article III of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 8. If a majority of votes cast upon an initiated or a referred measure are affirmative, it shall be deemed enacted. An initiated or referred measure which is approved shall become law thirty days after the election, and a referred measure which is rejected shall be void immediately. If conflicting measures are approved, the one receiving the highest number of affirmative votes shall be law. ★ An initiated measure approved by the electors may not be repealed or amended by the legislative assembly for seven years from its effective date, except by a two-thirds vote of the members elected to each house.

Disapproved June 14, 1988

29,803 to 67,477

NOTE: This was measure No. 1 on the primary election ballot.

CHAPTER 790

EXECUTIVE BRANCH ARTICLE

House Concurrent Resolution No. 3029, chapter 782, 1987 Session Laws, proposed by the Fiftieth Legislative Assembly of the State of North Dakota, to create a new article V of the Constitution of the State of North Dakota, relating to the executive branch of government, to the election, qualification, and compensation of executive officials, to the powers and duties of the governor, and to gubernatorial succession; to repeal the present article V of the Constitution of the State of North Dakota, relating to the executive branch of government, to the election and qualification of executive officials, to the powers and duties of the governor, and to gubernatorial succession; and to provide an effective date.

STATEMENT OF INTENT

This measure creates a new executive branch article for the constitution that retains all the current elected state officials. The amendment provides for the election and qualification of executive officials, for the powers and duties of the governor, and for gubernatorial succession. The amendment also repeals the present article V of the Constitution of the State of North Dakota, and provides that these changes will take effect on July 1, 1989.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH
DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed creation of a new article V and the following proposed repeal of the present article V of the Constitution of the State of North Dakota are agreed to and must be submitted to the qualified electors of the State of North Dakota at the primary election to be held in 1988, in accordance with section 16 of article IV of the Constitution of the State of North Dakota.

SECTION 1. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The executive power is vested in a governor, who shall reside at the seat of government and shall hold office for the term of four years beginning in the year 1992, and until a successor is elected and qualified. The term begins on December fifteenth following the governor's election.

SECTION 2. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The qualified electors of the state at the times and places of choosing members of the legislative assembly shall choose a governor, lieutenant governor, agriculture commissioner, attorney general, auditor, insurance

commissioner, three public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer. The legislative assembly may by law provide for a department of labor to be administered by a public official who may be either elected or appointed.

The powers and duties of the agriculture commissioner, attorney general, auditor, insurance commissioner, public service commissioners, secretary of state, superintendent of public instruction, tax commissioner, and treasurer must be prescribed by law. If the legislative assembly establishes a labor department, the powers and duties of the officer administering that department must be prescribed by law.

SECTION 3. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The governor and the lieutenant governor must be elected on a joint ballot. Each vote cast for a candidate for governor is deemed cast also for the candidate for lieutenant governor running jointly with the candidate for governor. The joint candidates having the highest number of votes must be declared elected, but if two or more joint candidates have an equal and highest number of votes for governor and lieutenant governor, the legislative assembly at its next regular session shall in joint session choose one pair of such joint candidates for the offices. The returns of the election for governor and lieutenant governor must be made in the manner prescribed by law.

SECTION 4. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

To be eligible to hold an elective office established by this article, a person must be a qualified elector of this state, must be at least twenty-five years of age on the day of the election, and must have been a resident of this state for the five years preceding election to office. To be eligible to hold the office of governor or lieutenant governor, a person must be at least thirty years old on the day of the election. The attorney general must be licensed to practice law in this state.

SECTION 5. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The qualified electors shall choose the elected state officials at a time designated by the legislative assembly. The elected state officials shall serve until their successors are duly qualified. Terms of office are four years, except that terms of the public service commissioners are six years, so arranged that one of them is elected every two years. The terms of the governor and lieutenant governor begin on December fifteenth following their election.

If two or more candidates for any executive office receive an equal and highest number of votes, the legislative assembly in joint session shall choose one of them for the office.

SECTION 6. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The elected state officials and the chief executive officers of the principal departments shall hold office in the state capital.

SECTION 7. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The governor is the chief executive of the state. The governor shall have the responsibility to see that the state's business is well administered and that its laws are faithfully executed.

The governor is commander-in-chief of the state's military forces, except when they are called into the service of the United States, and the governor may mobilize them to execute the laws and to maintain order.

The governor shall prescribe the duties of the lieutenant governor in addition to those prescribed in section 11 of this article.

The governor may call special sessions of the legislative assembly.

The governor shall present information on the condition of the state, together with any recommended legislation, to every session of the legislative assembly.

The governor shall transact and supervise all necessary business of the state with the United States, the other states, and the officers and officials of this state.

The governor may grant reprieves, commutations, and pardons. The governor may delegate this power in a manner provided by law.

SECTION 8. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The governor may fill a vacancy in any office by appointment if no other method is provided by this constitution or by law. If, while the senate is recessed or adjourned, a vacancy occurs in any office that is filled by appointment with senate confirmation, the governor shall make a temporary appointment to the office. When the senate reconvenes the governor shall make a nomination to fill the office. Except on request of the senate, no nominee rejected by the senate may again be nominated for that office at the same session, nor may the nominee be appointed to that office during a recess or adjournment of the senate.

SECTION 9. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

Every bill passed by the legislative assembly must be presented to the governor for the governor's signature. If the governor signs the bill, it becomes law.

The governor may veto a bill passed by the legislative assembly. The governor may veto items in an appropriation bill. Portions of the bill not vetoed become law.

The governor shall return for reconsideration any vetoed item or bill, with a written statement of the governor's objections, to the house in which it originated. That house shall immediately enter the governor's objections upon its journal. If, by a recorded vote, two-thirds of the members elected to that house pass a vetoed item or bill, it, along with the statement of the governor's objections, must immediately be delivered to the other house. If,

by a recorded vote, two-thirds of the members elected to the other house also pass it, the vetoed item or bill becomes law.

While the legislative assembly is in session, a bill becomes law if the governor neither signs nor vetoes it within three legislative days after its delivery to the governor. If the legislative assembly is not in session, a bill becomes law if the governor neither signs nor vetoes it within fifteen days, Saturdays and Sundays excepted, after its delivery to the governor.

SECTION 10. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

Any governor of this state who asks, receives, or agrees to receive any bribe upon any understanding that the governor's official opinion, judgment, or action shall be influenced thereby, or who gives or offers, or promises the governor's official influence in consideration that any member of the legislative assembly shall give the member's official vote or influence on any particular side of any question or matter upon which the member may be required to act in the member's official capacity, or who menaces any member by the threatened use of the governor's veto power, or who offers or promises any member that the governor will appoint any particular person or persons to any office created or thereafter to be created, in consideration that any member shall give the member's official vote or influence on any matter pending or thereafter to be introduced into either house of the legislative assembly, or who threatens any member that the governor will remove any person or persons from office or position with intent in any manner to influence the action of that member, must be punished in the manner now, or that may hereafter be, provided by law, and upon conviction thereof forfeits all right to hold or exercise any office of trust or honor in this state.

SECTION 11. A new section to a new article V of the Constitution of the State of North Dakota is hereby created and enacted to read as follows:

The lieutenant governor shall serve as president of the senate, and may, if the senate is equally divided on a question, vote on procedural and substantive matters. The lieutenant governor shall succeed to the office of governor when a vacancy occurs in the office of governor. If, during a vacancy in the office of governor, the lieutenant governor is unable to serve because of death, impeachment, resignation, failure to qualify, removal from office, or disability, the secretary of state shall act as governor until the vacancy is filled or the disability removed.

SECTION 12. REPEAL. The present article V of the Constitution of the State of North Dakota is hereby repealed.

SECTION 13. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on July 1, 1989.

Disapproved June 14, 1988

27,125 to 67,530

NOTE: This was measure No. 2 on the primary election ballot.

CHAPTER 791

REFERENDUM SUSPENSION OF TAX MEASURES

House Concurrent Resolution No. 3034, chapter 783, 1987 Session Laws, proposed by the Fiftieth Legislative Assembly of the State of North Dakota, for the amendment of section 5 of article III of the Constitution of the State of North Dakota, relating to the placement on an election ballot and suspension of operations of a referred tax measure.

STATEMENT OF INTENT

This amendment would provide that submission of a petition to refer a tax measure would not suspend its operation until the referred tax measure has been voted upon and successfully referred by a vote of the electorate.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH
DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendment to section 5 of article III of the Constitution of the State of North Dakota is agreed to and shall be submitted to the qualified electors of the state of North Dakota at the general election to be held in 1988, in accordance with the provisions of section 16 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Section 5 of article III of the Constitution of the State of North Dakota is hereby amended and reenacted to read as follows:

Section 5. An initiative petition ~~shall~~ must be submitted not less than ninety days before the statewide election at which the measure is to be voted upon. A referendum petition may be submitted only within ninety days after the filing of the measure with the secretary of state. The submission of a petition shall suspend the operation of any measure enacted by the legislative assembly except emergency measures, tax measures, and appropriation measures for the support and maintenance of state departments and institutions. The submission of a petition against one or more items or parts of any measure shall not prevent the remainder from going into effect. A referred measure may be voted upon at a statewide election or at a special election called by the governor.

Disapproved November 8, 1988

104,832 to 157,783

NOTE: This was measure No. 1 on the general election ballot.

CHAPTER 792

BOARD OF HIGHER EDUCATION

House Concurrent Resolution No. 3044, chapter 784, 1987 Session Laws, proposed by the Fiftieth Legislative Assembly of the State of North Dakota, for the amendment of subsections 2 through 8 of section 6 of article VIII of the Constitution of the State of North Dakota, relating to the appointment of members to and the powers and duties of the state board of higher education.

STATEMENT OF INTENT

This amendment updates the language relating to the appointment of members to and the powers and duties of the state board of higher education and removes the prohibition against having more than one graduate from the same institution on the state board of higher education.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendments to subsections 2 through 8 of section 6 of article VIII of the Constitution of the State of North Dakota are agreed to and shall be submitted to the qualified electors of the State of North Dakota at the general election to be held in 1988, in accordance with the provisions of section 16 of article IV of the Constitution of the State of North Dakota.

SECTION 1. AMENDMENT. Subsections 2 through 8 of section 6 of article VIII of the Constitution of the State of North Dakota are hereby amended and reenacted to read as follows:

2. a. The state board of higher education shall consist of seven members, with staggered seven-year terms continuing as those terms currently exist, all of whom shall be qualified electors ~~and taxpayers~~ of the state, and who shall have resided in this state for not less than five years immediately preceding their appointment, ~~to be appointed by the governor; by and with the consent of and confirmed by~~ the senate, from a list of names selected as hereinafter provided.

~~There shall not be on said board more than one graduate of any one of the institutions under the jurisdiction of the state board of higher education at any one time.~~ No person employed by any institution under the control of the board ~~shall~~ may serve as a member of the board, nor ~~shall~~ may any employee of any such institution be eligible for membership on the state board of higher education for a period of two years ~~following the termination of his~~ after employment.

On or before the first day of February, 1939, the The governor shall nominate members to the board of higher education from a list of three names for each position, selected by the unanimous action of the president of the North Dakota educational association, the chief justice of the supreme court, and the superintendent of public instruction, and, with the consent of a majority of the members elect of the senate, shall appoint from such list as such state board of higher education seven members, whose terms. Terms shall commence on the first day of July, 1939, one of which terms and shall expire on the thirtieth day of June, 1940, and one on the thirtieth day of June in each of the years 1941, 1942, 1943, 1944, 1945, and 1946. The term of office of members appointed to fill vacancies at the expiration of said terms shall be each member is for seven years, and in the case of vacancies otherwise arising, appointments shall may be made only for the balance of the term of the members whose places are to be filled.

- b. In the event any nomination made by the governor is not consented to and confirmed by the senate as hereinbefore provided, the governor shall again nominate a candidate for such the office, selected from a new list, prepared in the manner hereinbefore provided, which. The nomination shall must be submitted to the senate for confirmation, and said the proceedings shall must be continued until such all appointments have been confirmed by the senate, or the session of the legislature shall have legislative assembly has adjourned.
 - c. When any term expires or a vacancy occurs when the legislature legislative assembly is not in session, the governor may appoint from a list selected as hereinbefore provided, a member who shall serve until the opening of the next session of the legislature legislative assembly, at which time his the appointment shall must be certified to the senate for confirmation, as above provided; and if the appointment be is not confirmed by the thirtieth legislative day of such the session, his the office shall be is deemed vacant and the governor shall nominate from a list selected as hereinbefore provided, another candidate for such the office and the same proceedings shall must be followed as are above set forth; provided further, that when the legislature shall be legislative assembly is in session at any time within six months prior to the date of the expiration of the term of any member, the governor shall nominate his a successor from a list selected as above set forth, within the first thirty days of such the session, and upon confirmation by the senate such the successor shall take office at the expiration of the term of the incumbent. No person who has been nominated and whose nomination the senate has failed to confirm, shall be is eligible for an interim appointment.
3. The members of the state board of higher education may only be removed by impeachment for the offenses and in the manner and according to the procedure provided for the removal of the governor by impeachment proceedings.

4. Each appointive member of the state board of higher education shall receive ~~such~~ compensation as may be determined by the legislative assembly for the time actually spent devoted to the duties of ~~his~~ office; and, ~~in addition, shall receive his~~ necessary expenses in the same manner and amounts as other state officials for attending meetings and performing other functions of ~~his~~ office.
5. The ~~legislature~~ legislative assembly shall provide adequate funds for the proper carrying out of the functions and duties of the state board of higher education.
6.
 - a. The state board of higher education shall ~~hold its first meeting at the office of the state board of administration at Bismarck, on the 6th day of July, 1939; and shall organize and elect one of its members as president of such the board for a term of one year. It shall also at said meeting, or as soon thereafter as may be practicable, elect a competent person as secretary, who shall reside during his term of office in the city of Bismarck, North Dakota. Said secretary shall to hold office at the will of the board. As soon as said board is established and organized, it shall assume all the powers and perform all the duties now conferred by law upon the board of administration in connection with the several institutions hereinbefore mentioned, and the said board of administration shall immediately upon the organization of said state board of higher education, surrender and transfer to said state board of higher education all duties, rights, and powers granted to it under the existing laws of this state concerning the institutions hereinbefore mentioned, together with all property, deeds, records, reports, and appurtenances of every kind belonging or appertaining to said institutions.~~
 - b. The ~~said~~ state board of higher education ~~shall have~~ has full authority over the institutions under its control with the right, among its other powers, to prescribe, limit, or modify the courses offered at the several institutions. ~~In furtherance of its powers, the~~ The state board of higher education ~~shall have~~ has the power to delegate to its employees details of the administration of the institutions under its control. The ~~said~~ state board of higher education ~~shall have~~ has full authority to organize or reorganize within constitutional and statutory limitations, the work of each institution under its control, and to do ~~each and~~ everything necessary and proper for the efficient and economic administration of ~~said~~ state ~~educational~~ institutions of higher education.
 - c. ~~Said~~ The board shall prescribe for all of ~~said~~ institutions of higher education standard systems of accounts and records and shall ~~biennially, and within six (6) months immediately preceding the regular session of the legislature, legislative assembly~~ make a report to the governor, covering in detail the operations of the educational institutions under its control.
 - d. It shall be the duty of the heads of the several state institutions ~~hereinbefore mentioned, of higher education~~ to submit the budget requests for the ~~biennial~~ appropriations for ~~said the~~ institutions to ~~said the~~ state board of higher

education; ~~and said.~~ The state board of higher education shall consider ~~said~~ the budgets and shall revise the same as in its judgment ~~shall be for~~ will serve the best interests of the educational system of the state; ~~and thereafter the.~~ The state board of higher education shall prepare and present to the state budget board ~~governor~~ and to the legislature legislative assembly a single unified budget covering the needs of all the institutions under its control. ~~"Said budget shall be prepared and presented by the board of administration until the state board of higher education organizes as provided in subsection 6a."~~ The appropriations for all of ~~said~~ institutions of higher education shall be contained in one legislative measure, ~~except as otherwise allowed by law.~~ The budgets and appropriation measures for the agricultural experiment stations and their substations and the extension division of the North Dakota state university of agriculture and applied science may be separate from those of state educational institutions.

- e. The ~~said~~ state board of higher education ~~shall have~~ has the control of the expenditure of the funds belonging to, and allocated to such institutions and also those, ~~or~~ appropriated by the legislature; legislative assembly for the institutions of higher education in this state; ~~provided, however, except that funds appropriated by the legislature legislative assembly and specifically designated for any one or more of such institutions; shall~~ institution may not be used for any other institution.
7. a. The state board of higher education shall, ~~as soon as practicable,~~ appoint for a term of not to exceed three ~~(3)~~ years, a state commissioner of higher education, whose principal office ~~shall must~~ be at the state capitol, in the city of Bismarck. ~~Said~~ The commissioner of higher education ~~shall be~~ is responsible to the state board of higher education and ~~shall be~~ removable by ~~said~~ the board for cause.
- b. The state commissioner of higher education shall be a graduate of some reputable college or university; and who by training and experience is familiar with the problems peculiar to higher education.
- c. Such commissioner of higher education shall be the chief executive officer of ~~said~~ the state board of higher education; and shall perform such duties as shall be prescribed by the board.
8. This constitutional provision ~~shall be~~ is self-executing and ~~shall become~~ is effective without the necessity of legislative action.

Disapproved November 8, 1988

115,605 to 146,325

NOTE: This was measure No. 2 on the general election ballot.

CONSTITUTIONAL AMENDMENTS, PROPOSED

CHAPTER 793

SENATE CONCURRENT RESOLUTION NO. 4005
(Legislative Council)
(Interim Judiciary Committee)

LEGISLATIVE PRESIDING OFFICERS

A concurrent resolution for the amendment of sections 8 and 13 of article IV, section 7 of article V, and section 9 of article XI of the Constitution of North Dakota, relating to election of presiding officers of the legislative assembly, legislative procedures, powers and duties of the lieutenant governor, and impeachment proceedings; and to repeal section 13 of article XI of the Constitution of North Dakota, relating to impeachment proceedings.

STATEMENT OF INTENT

This amendment removes the lieutenant governor as presiding officer of the Senate and provides that the presiding officer of the Senate must be elected from the membership of the Senate.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF
REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendments to sections 8 and 13 of article IV, section 7 of article V, section 9 of article XI, and repeal of section 13 of article XI of the Constitution of North Dakota are agreed to and must be submitted to the qualified electors of the State of North Dakota at the primary election to be held in 1990, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 8 of article IV of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 8. ~~The~~ Each house of ~~representatives~~ shall elect one of its members to act as presiding officer at the beginning of each organizational session.

SECTION 2. AMENDMENT. Section 13 of article IV of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 13. Each house shall keep a journal of its proceedings, and a recorded vote on any question shall be taken at the request of one-sixth of those members present. No bill may become law except by a recorded vote of a majority of the members elected to each house, ~~and the lieutenant governor is considered a member-elect of the senate when the lieutenant governor votes.~~

No law may be enacted except by a bill passed by both houses, and no bill may be amended on its passage through either house in a manner which changes its general subject matter. No bill may embrace more than one subject, which must be expressed in its title; but a law violating this provision is invalid only to the extent the subject is not so expressed.

Every bill must be read on two separate natural days, and the readings may be by title only unless a reading at length is demanded by one-fifth of the members present.

No bill may be amended, extended, or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions.

The presiding officer of each house shall sign all bills passed and resolutions adopted by the legislative assembly, and the fact of signing shall be entered at once in the journal.

Every law, except as otherwise provided in this section, enacted by the legislative assembly takes effect on July first after its filing with the secretary of state or ninety days after its filing whichever comes later, or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. Every appropriation measure for support and maintenance of state departments and institutions and every tax measure that changes tax rates enacted by the legislative assembly take effect on July first after its filing with the secretary of state or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. An emergency measure takes effect upon its filing with the secretary of state or on a date specified in the measure. Every law enacted by a special session of the legislative assembly takes effect on a date specified in the Act.

The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. Except as otherwise provided in this constitution, no local or special laws may be enacted, nor may the legislative assembly indirectly enact special or local laws by the partial repeal of a general law but laws repealing local or special laws may be enacted.

SECTION 3. AMENDMENT. Section 7 of article V of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 7. The powers and duties of the lieutenant governor shall be to serve as president of the senate, and he may, when the senate is equally divided, vote on procedural matters, and on substantive matters if his vote would be decisive. Additional duties shall be prescribed by the governor. If, during the vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign, or die, or from mental or physical disease, or otherwise become incapable of performing the duties of his office, the secretary of state shall act as governor until the vacancy shall be filled or the disability removed.

SECTION 4. AMENDMENT. Section 9 of article XI of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 9. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation to do justice according to the law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. ~~When the~~

~~governor or lieutenant governor is on trial, the presiding judge of the
supreme court shall preside.~~

SECTION 5. REPEAL. Section 13 of article XI of the Constitution of
North Dakota is hereby repealed.

Filed March 27, 1989

CHAPTER 794

HOUSE CONCURRENT RESOLUTION NO. 3046 (V. Thompson)

EXECUTIVE BRANCH REORGANIZATION

A concurrent resolution to create a new section to article V of the Constitution of North Dakota, relating to the reorganization of executive and administrative offices, boards, bureaus, agencies, commissions, and instrumentalities of state government.

STATEMENT OF INTENT

This measure creates a new section to the executive branch article of the Constitution that mandates reorganization of the many offices, boards, bureaus, agencies, commissions, and instrumentalities of state government into no more than fourteen departments other than constitutionally elected offices, boards, or commissions.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed creation of a new section to article V of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the next statewide election, in accordance with the provisions of section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article V of the Constitution of North Dakota is hereby created and enacted to read as follows:

For more effective administration, the governor may propose to the legislative assembly, from time to time, changes in the statutory allocation of functions, powers, and duties among and within the executive departments, other than those headed by constitutionally elective offices. A commission consisting of the governor, lieutenant governor, and three members of the legislative assembly selected by the legislative council shall, on or before February 1, 1991, propose the allocation of executive power to not more than fourteen departments, not including the departments under constitutionally elected officials or constitutional boards and commissions. Proposed changes under this section must be in special executive orders, setting forth the structural and all statutory changes, and submitted to both houses of the legislative assembly on the same day. If an executive order under this section is not disapproved by a majority of the members elected to either house of the legislative assembly within thirty legislative days, the order shall have the force of law when filed with the secretary of state or on a later day specified in the order.

Filed April 5, 1989

CHAPTER 795

HOUSE CONCURRENT RESOLUTION NO. 3022
(Representative Goetz)
(Senator Tallackson)

RESOURCES TRUST FUND

A concurrent resolution to create and enact a new section to article X of the Constitution of North Dakota to provide that the resources trust fund is a constitutional trust fund; to provide for transfer of funds to the resources trust fund; and to provide an effective date.

STATEMENT OF INTENT

This measure authorizes the legislative assembly to dedicate a percentage of oil tax revenues to a special fund to be known as the resources trust fund, to be expended for water projects and energy conservation programs. This measure will become effective July 1, 1991.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following new section to article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 1990, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article X of the Constitution of North Dakota is hereby created and enacted to read as follows:

The legislative assembly may provide by law for a percentage of revenue from taxes imposed on the extraction or production of oil to be allocated and credited to a special trust fund, to be known as the resources trust fund. The principal and income of the resources trust fund may be expended only pursuant to legislative appropriation for:

1. Constructing water-related projects, including rural water systems; and
2. Funding of programs for energy conservation.

SECTION 2. TRANSFER. If this measure is approved by the voters, any amounts in the sinking fund established for payment of the North Dakota water development bonds, southwest pipeline series, and any amounts in the resources trust fund must be transferred to the resources trust fund as created by this measure.

SECTION 3. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on July 1, 1991, and applies to tax collections received on or after that date.

Filed April 11, 1989

CHAPTER 796

SENATE CONCURRENT RESOLUTION NO. 4017
(Senators Maixner, Keller, Lips)
(Representatives Ulmer, Whalen, Goetz)

COAL SEVERANCE TRUST FUND USE

A concurrent resolution for the amendment of section 21 of article X of the Constitution of North Dakota, relating to use of coal severance taxes deposited in the permanent coal development trust fund; and to provide an effective date.

STATEMENT OF INTENT

This amendment allows up to fifty percent of coal severance tax moneys deposited in the permanent coal development trust fund during the biennium to be appropriated by the Legislative Assembly for lignite research, development, and marketing. The amendment becomes effective July 1, 1990.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 21 of article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the primary election to be held in 1990, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 21 of article X of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 21. Not less than fifteen percent of the tax imposed for severing coal shall be placed into a permanent trust fund in the state treasury to be held in trust and administered by the board of university and school lands, which shall have full authority to invest said trust funds as provided by law, and may loan moneys from the fund to political subdivisions as provided by law. The interest earned on the moneys in said trust fund shall be used first to replace uncollectable loans made from the fund, and the balance shall be credited to the general fund of the state. Up to fifty percent of the taxes collected and deposited in the permanent trust fund during a biennium may be appropriated by the legislative assembly for lignite research, development, and marketing as provided by law.

SECTION 2. EFFECTIVE DATE. If approved by the voters, this measure becomes effective on July 1, 1990.

Filed April 12, 1989

CHAPTER 797

SENATE CONCURRENT RESOLUTION NO. 4021 (Holmberg, Streibel)

BOARD OF HIGHER EDUCATION MEMBERS

A concurrent resolution for the amendment of subdivision a of subsection 2 of section 6 of article VIII of the Constitution of North Dakota, relating to the qualifications of the members of the state board of higher education.

STATEMENT OF INTENT

This amendment defines "graduate" for purposes of serving on the state board of higher education.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to subdivision a of subsection 2 of section 6 of article VIII of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1990, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Subdivision a of subsection 2 of section 6 of article VIII of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

2. a. The state board of higher education shall consist of seven members, all of whom shall be qualified electors and taxpayers of the state, and who shall have resided in this state for not less than five years immediately preceding their appointment, to be appointed by the governor, by and with the consent of the senate, from a list of names selected as hereinafter provided.

There shall not be on said board more than one graduate of any one of the institutions under the jurisdiction of the state board of higher education at any one time. "Graduate" means a person who has received a baccalaureate degree and does not include a person who has received an associate or advanced degree. No person employed by any institution under the control of the board shall serve as a member of the board, nor shall any employee of any such institution be eligible for membership on the state board of higher education for a period of two years following the termination of his employment.

On or before the first day of February, 1939, the governor shall nominate from a list of three names for each position, selected by the unanimous action of the president of the North Dakota educational association, the chief justice of the supreme court, and the superintendent of public instruction,

and, with the consent of a majority of the members-elect of the senate, shall appoint from such list as such state board of higher education seven members, whose terms shall commence on the first day of July, 1939, one of which terms shall expire on the thirtieth day of June, 1940, and one on the thirtieth day of June in each of the years 1941, 1942, 1943, 1944, 1945, and 1946. The term of office of members appointed to fill vacancies at the expiration of said terms shall be for seven years, and in the case of vacancies otherwise arising, appointments shall be made only for the balance of the term of the members whose places are to be filled.

Filed April 12, 1989

CHAPTER 798

HOUSE CONCURRENT RESOLUTION NO. 3005
(Legislative Council)
(Interim Judiciary Committee)

EFFECTIVE DATE OF LEGISLATION

A concurrent resolution for the amendment of section 13 of article IV of the Constitution of North Dakota, relating to the effective date of legislation.

STATEMENT OF INTENT

This amendment provides that all legislation, except appropriation and tax measures, would be effective on August first after filing with the secretary of state or ninety days after filing if filed on or after August first and before January first of the following year. The effective date for appropriation and tax measures would remain July first.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendment to section 13 of article IV of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of the State of North Dakota at the general election to be held in 1990, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 13 of article IV of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 13. Each house shall keep a journal of its proceedings, and a recorded vote on any question shall be taken at the request of one-sixth of those members present. No bill may become law except by a recorded vote of a majority of the members elected to each house, and the lieutenant governor is considered a member-elect of the senate when the lieutenant governor votes.

No law may be enacted except by a bill passed by both houses, and no bill may be amended on its passage through either house in a manner which changes its general subject matter. No bill may embrace more than one subject, which must be expressed in its title; but a law violating this provision is invalid only to the extent the subject is not so expressed.

Every bill must be read on two separate natural days, and the readings may be by title only unless a reading at length is demanded by one-fifth of the members present.

No bill may be amended, extended, or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions.

The presiding officer of each house shall sign all bills passed and resolutions adopted by the legislative assembly, and the fact of signing shall be entered at once in the journal.

Every law, except as otherwise provided in this section, enacted by the legislative assembly during its eighty natural meeting days takes effect on ~~July~~ August first after its filing with the secretary of state, or if filed on or after August first and before January first of the following year ninety days after its filing ~~whichever comes later~~, or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. Every appropriation measure for support and maintenance of state departments and institutions and every tax measure that changes tax rates enacted by the legislative assembly take effect on July first after its filing with the secretary of state or on a subsequent date if specified in the law unless, by a vote of two-thirds of the members elected to each house, the legislative assembly declares it an emergency measure and includes the declaration in the Act. An emergency measure takes effect upon its filing with the secretary of state or on a date specified in the measure. Every law enacted by a special session of the legislative assembly takes effect on a date specified in the Act.

The legislative assembly shall enact all laws necessary to carry into effect the provisions of this constitution. Except as otherwise provided in this constitution, no local or special laws may be enacted, nor may the legislative assembly indirectly enact special or local laws by the partial repeal of a general law but laws repealing local or special laws may be enacted.

Filed March 31, 1989

CHAPTER 799

HOUSE CONCURRENT RESOLUTION NO. 3040 (Sorensen)

JUDICIAL VACANCIES

A concurrent resolution for the amendment of section 13 of article VI of the Constitution of North Dakota, relating to the filling of judicial vacancies.

STATEMENT OF INTENT

This amendment provides that a person appointed by the Governor to fill a vacancy on the supreme court or district court serves until the next general election. However, if the next general election occurs within one year after the appointment, the appointment continues until the following general election.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendment to section 13 of article VI of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1990, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 13 of article VI of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 13. A judicial nominating committee shall be established by law. Any vacancy in the office of supreme court justice or district court judge shall be filled by appointment by the governor from a list of candidates nominated by the committee, unless the governor calls a special election to fill the vacancy for the remainder of the term. An appointment ~~shall continue until the next general election; when the office shall be filled by election for the remainder of the term continues until the next general election, unless the next general election occurs within one year after the appointment, in which case the appointment continues until the following general election.~~

Filed April 6, 1989

CHAPTER 800

SENATE CONCURRENT RESOLUTION NO. 4043
(Stenehjem, Holmberg, Heinrich)
(Approved by the Committee on Delayed Bills)

STATE AUDITOR IN LEGISLATIVE BRANCH

A concurrent resolution to create a new section to article IV of the Constitution of North Dakota, relating to the office of state auditor; to amend sections 12 and 13 of article V of the Constitution of North Dakota, relating to the office of state auditor; and to provide an effective date.

STATEMENT OF INTENT

This amendment would remove the office of state auditor from the executive branch and place the office in the legislative branch effective in 1992.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed creation of a new section to article IV of the Constitution of North Dakota, and the following proposed amendments to sections 12 and 13 of article V of the Constitution of North Dakota, are hereby agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 1990, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. A new section to article IV of the Constitution of North Dakota is hereby created and enacted to read as follows:

At the times and places of choosing members of the legislative assembly, the qualified electors of the state shall choose an auditor. At the time of election the auditor must have attained the age of twenty-five years and must be a qualified elector. The auditor shall hold office at the seat of government for a term of four years beginning in 1992, and until a successor is elected and duly qualified. The term begins on December first following the auditor's election. The auditor shall audit the receipt, expenditure, and use of public funds, as provided by law, and is responsible to the legislative assembly in the performance of those duties and any other duties imposed by law.

SECTION 2. AMENDMENT. Section 12 of article V of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 12. There shall be chosen by the qualified electors of the state at the times and places of choosing members of the legislative assembly, a secretary of state, ~~auditor~~, treasurer, superintendent of public instruction, commissioner of insurance, an attorney general, a commissioner of agriculture and labor, and a tax commissioner, who shall have attained the age of twenty-five years and shall have the qualifications of state electors. They shall severally hold their offices at the seat of government for the

term of four years beginning with the year 1965, and until their successors are elected and duly qualified; but no person shall be eligible for the office of treasurer for more than two consecutive terms.

The board of railroad commissioners shall hereafter be known as the public service commission and the members of the board of railroad commissioners as public service commissioners and the powers and duties now or hereafter granted to and conferred upon the board of railroad commissioners are hereby transferred to the public service commission.

The public service commissioners shall have the qualifications of state electors, have attained the age of twenty-five years, be chosen by the qualified electors of the state at the times and places of choosing members of the legislative assembly, hold office at the seat of government and until their successors are elected and duly qualified. As each of the three public service commissioners now holding office completes his term, his successor shall be elected for a term of six years.

The legislative assembly may by law provide for a department of labor, which, if provided for, shall be separate and distinct from the department of agriculture, and shall be administered by a public official who may be either elected or appointed, whichever the legislative assembly shall declare; and if such a department is established the commissioner of agriculture and labor provided for above shall become the commissioner of agriculture.

SECTION 3. AMENDMENT. Section 13 of article V of the Constitution of North Dakota is hereby amended and reenacted to read as follows:

Section 13. The powers and duties of the secretary of state, ~~auditor,~~ treasurer, superintendent of public instruction, commissioner of insurance, commissioners of railroads, attorney general and commissioner of agriculture and labor shall be prescribed by law. In the event that the legislative assembly shall establish a separate and distinct department of labor, the powers and duties of the officer administering such department of labor shall be prescribed by law.

SECTION 4. EFFECTIVE DATE. If approved by the voters, sections 2 and 3 of this measure become effective on January 1, 1993.

Filed April 19, 1989

HOUSE CONCURRENT RESOLUTIONS

CHAPTER 801

HOUSE CONCURRENT RESOLUTION NO. 3001
(Legislative Council)
(Interim Budget Committee on Human Services)

MENTAL HEALTH SERVICES STUDY

A concurrent resolution directing the Legislative Council to review and develop recommendations regarding the expansion of community services for the chronically mentally ill and chemically dependent and the future role of the State Hospital.

WHEREAS, the 1987 Legislative Assembly passed Senate Bill No. 2036 that requires the Department of Human Services to develop a plan for an integrated, multidisciplinary continuum of services for chronically mentally ill individuals; and

WHEREAS, the Department of Human Services has, pursuant to this law, developed a plan for the treatment of the mentally ill and the promotion of mental health for the period July 1, 1987, to June 30, 1993; and

WHEREAS, the implementation of the department's plan may require significant additional state resources during the 1989-91 and future bienniums and as community services are expanded the role of the department and the State Hospital in the provision of these services may need to be redefined and resources reallocated;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Department of Human Services as it implements the plan for expansion of community services for the chronically mentally ill and chemically dependent during the 1989-91 biennium to present information, along with the State Hospital, to the Legislative Council, or a committee it designates, on the implementation of additional community services and the effect these community services will have on the future services to be provided by the State Hospital; and

BE IT FURTHER RESOLVED, that the Legislative Council review the implementation, hold periodic discussions with Department of Human Services and State Hospital personnel, and develop recommendations regarding the future role of the State Hospital during the 1991-93 and future bienniums; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 23, 1989

CHAPTER 802

HOUSE CONCURRENT RESOLUTION NO. 3002
(Legislative Council)
(Interim Budget Committee on Human Services)

MENTAL HEALTH PILOT PROJECTS

A concurrent resolution urging the Department of Human Services, in its development of a continuum of services for the chronically mentally ill and chemically dependent, to conduct pilot projects for legislative consideration in expanding the program for the 1991-93 biennium and urging the department to use regional intervention services to control access to the mental health system.

WHEREAS, the 1987 Legislative Assembly passed Senate Bill No. 2036, which required the Department of Human Services to develop a plan for an integrated, multidisciplinary continuum of services for chronically mentally ill individuals; and

WHEREAS, the Legislative Council's Budget Committee on Human Services during the 1987-88 interim studied the future role and function of the State Hospital in the provision of services to the mentally ill and chemically dependent during a period of expansion of community-based services; and

WHEREAS, the committee toured the State Hospital and received testimony on the current needs and expected future role and function of the State Hospital; and

WHEREAS, consultants from the National Conference of State Legislatures' Mental Health Project recommended that development of a comprehensive mental health system include the use of pilot projects to demonstrate the costs and effectiveness of the system of care at the local level; and

WHEREAS, the committee determined that the use of regional intervention services at the human service centers, to evaluate individuals and determine appropriate treatment, along with necessary community services could assist in reducing the number of inappropriate placements to the State Hospital;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Department of Human Services, in its development of a continuum of mental health services, to conduct pilot projects during the 1989-91 biennium, including the use of regional intervention services to control access to the system, to assist the Fifty-second Legislative Assembly in evaluating the program and in considering the further expansion of community services during the 1991-93 biennium; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the executive director of the Department of Human Services.

Filed March 23, 1989

CHAPTER 803

HOUSE CONCURRENT RESOLUTION NO. 3003
(Legislative Council)
(Interim Budget Committee on Human Services)

HUMAN SERVICE FUNDING STUDY

A concurrent resolution directing the Legislative Council to study the budgeting, auditing, and management of the reimbursement system for the Department of Human Services' developmental disabilities program; to study the budgeting, auditing, and management of the existing reimbursement system for private providers of mental health services; to review plans to expand the state's partnership with private mental health providers; and urging the Appropriations Committees of the Fifty-first Legislative Assembly to consider areas of concern relating to the budget for reimbursement of developmental disability providers and private providers of mental health services.

WHEREAS, the Budget Committee on Human Services during the 1987-88 interim conducted a study of the reimbursement systems established by the Department of Human Services; and

WHEREAS, the committee received testimony from developmental disability providers suggesting the Department of Human Services conduct more timely audits, involve more outside representatives in the reimbursement process, and minimize inconsistencies in reimbursement among the providers; and that a consultant be contracted with to conduct a management review of the reimbursement program; and

WHEREAS, the committee also received complaints from providers regarding differentials in reimbursement rates between private and state-operated developmental disability facilities, facility staff salary differences, and the department's reimbursement penalty for facilities with less than 95 percent occupancy; and

WHEREAS, a detailed review of the management of the reimbursement system is necessary to address the provider concerns regarding the appropriate methods for budgeting, auditing, and management of the reimbursement program; and

WHEREAS, the committee received testimony that inequities exist between the reimbursement system of the Department of Human Services available to developmental disability providers and private providers of mental health services; and

WHEREAS, a detailed review of the policies and management of the reimbursement system available to private providers of mental health services is necessary to properly plan for an orderly development of a working partnership between the public and private mental health delivery systems;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the budgeting, auditing, and management of the Department of Human Services' developmental disabilities reimbursement system; study the budgeting, auditing, and management of the existing reimbursement system for private providers of mental health services; and review plans to expand the state's partnership with private mental health providers; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement those recommendations, to the Fifty-second Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Appropriations Committees of the Fifty-first Legislative Assembly consider the budget concerns of the private mental health providers and developmental disabilities providers, including differentials in rates between private and state-operated facilities, facility staff salary differences, and the department's reimbursement penalty for facilities with less than 95 percent facility occupancy, in the development of the Department of Human Services' 1989-91 appropriation.

Filed March 30, 1989

CHAPTER 804

HOUSE CONCURRENT RESOLUTION NO. 3004
(Legislative Council)
(Interim Jobs Development Commission)

JOBS DEVELOPMENT COMMISSION

A concurrent resolution directing the Legislative Council to establish a Jobs Development Commission composed of legislators, officials from the executive branch of state government, officials from higher education, and representatives of the private sector to study methods and coordinate efforts to initiate and sustain state economic development and to stimulate the creation of new employment opportunities for the citizens of North Dakota.

WHEREAS, the North Dakota economy is extremely vulnerable to national and international forces that have depressed energy prices and the price of the state's leading agricultural export commodities, the impact of which is felt not only by energy industry workers and their families and farm and ranch families but also by businesses, public service entities, and residents of rural and urban North Dakota communities; and

WHEREAS, the state's vulnerability to these economic forces may be reduced by strengthening and diversifying the state's economic base through a concerted effort by private and public sectors to strengthen, expand, and retain existing business and industry and to facilitate the startup and growth of new business and industry in the state; and

WHEREAS, both the Forty-ninth and Fiftieth Legislative Assemblies directed the Legislative Council to form a Jobs Development Commission composed of legislators and other representatives of the public and private sectors to study and develop methods to initiate and sustain state economic development; and

WHEREAS, both the 1985-86 Jobs Development Commission and the 1987-88 Jobs Development Commission provided a necessary and efficient focal point for representatives of private and public sectors to discuss proposals and develop and execute policies and plans for state economic development;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council form a Jobs Development Commission composed of legislators, officials from the executive branch of state government, officials from higher education, and representatives of the private sector to study methods and coordinate efforts to initiate and sustain state economic development and to stimulate the creation of new employment opportunities for the citizens of North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 31, 1989

CHAPTER 805

HOUSE CONCURRENT RESOLUTION NO. 3006
(Legislative Council)
(Interim Committee on Public Employees Retirement Programs)

RETIREMENT BOARD CONSOLIDATION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of consolidating various organizational and investment functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board.

WHEREAS, it is in the best interests of the state and its political subdivisions to provide cost efficient and properly administered retirement programs for the benefit of public employees; and

WHEREAS, it has recently been observed that the retirement system goals and investment objectives of the Public Employees Retirement System and Teachers' Fund for Retirement are similar in many respects and that possible administrative efficiencies and cost savings might be realized through the consolidation of various organizational and investment functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board; and

WHEREAS, the decision whether or not to consolidate functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board is a matter of public policy involving a number of questions that need to be answered and problems to be solved, and, therefore, should be a decision made by the Legislative Assembly in close consultation with the affected boards; and

WHEREAS, any consolidation of functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board should not jeopardize the past accomplishments or necessary goals and objectives of public retirement programs;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of various options relating to the consolidation of various organizational and investment functions of the Public Employees Retirement System, Teachers' Fund for Retirement, and State Investment Board; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 23, 1989

CHAPTER 806

HOUSE CONCURRENT RESOLUTION NO. 3009
(Representatives Kelly, R. Larson, D. Olsen)
(Senators Mathern, Stenehjem)

NURSING HOME RATES STUDY

A concurrent resolution directing the Legislative Council to study the methodology for considering property costs in setting rates for nursing home care in North Dakota.

WHEREAS, the Fiftieth Legislative Assembly enacted North Dakota Century Code Chapter 50-24.4, relating to authority of the Department of Human Services to determine rates for care of residents of nursing homes that qualify as vendors of medical assistance; and

WHEREAS, during the 1987-88 interim the Legislative Council's Budget Committee on Human Services studied the Department of Human Services' development of a case mix reimbursement system that establishes the part of the payment rate for nursing care which considers factors other than the cost of nursing home property; and

WHEREAS, members of the nursing home industry have solicited and requested the direction of the Legislative Assembly in the development of a methodology that considers the cost of nursing home property used in providing nursing home care;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the present and alternative methodologies for considering property costs in setting rates for nursing home care in this state and review methods used in other states which eliminate consideration of actual interest and depreciation costs; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 30, 1989

CHAPTER 807

HOUSE CONCURRENT RESOLUTION NO. 3010
(Schmidt)

FEDERAL CROP INSURANCE INDEMNITY INCREASE URGED

A concurrent resolution urging the Federal Crop Insurance Corporation of the United States Department of Agriculture to increase the amount of indemnity on major crops to levels that reflect anticipated market price or target price, to maintain yield guarantee levels to at least the yield guarantee levels for 1988 and to move the last day of replant for small grains up ten days.

WHEREAS, North Dakota has just experienced the most devastating drought since the 1930's; and

WHEREAS, climatic conditions did not improve in the Midwest during the last quarter of 1988; and

WHEREAS, agricultural producers cannot insure the cash crops they are growing at market level prices due to the unavailability of such a price selection; and

WHEREAS, the last day of replant for small grains is set too late under present regulations; and

WHEREAS, the chances of a crop disaster aid package being passed during the 1989 growing season are slim; and

WHEREAS, Congress required in the 1988 Disaster Emergency Act that the Commission on the Improvement of the Federal Crop Insurance Program address problems within the Federal Crop Insurance Corporation;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Federal Crop Insurance Corporation of the United States Department of Agriculture to increase major crop indemnity prices so that they more accurately reflect the anticipated market or target price levels of the crops insured;

BE IT FURTHER RESOLVED, that the Federal Crop Insurance Corporation maintain yield guarantee levels to at least the 1988 levels; and

BE IT FURTHER RESOLVED, that the last day of replant for small grains be moved up ten days; and

BE IT FURTHER RESOLVED, that the commission schedule an April 1989 hearing at Bismarck, North Dakota, concerning the problems of the Federal Crop Insurance Corporation; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Manager of the Federal Crop Insurance Corporation, the Commission on the Improvement of the Federal Crop Insurance Program, the Secretary of Agriculture of the United States Department of Agriculture, the chairmen of the United States Senate and House Committees on Agriculture, each member of the North Dakota Congressional Delegation, and the Governor of North Dakota.

Filed March 23, 1989

CHAPTER 808

HOUSE CONCURRENT RESOLUTION NO. 3013

(Representatives Payne, R. Berg, Bernstein, Dorso, Gorman, Kelly,
Kloubec, Scherber, Schneider, Soukup)
(Senators Lashkowitz, Mathern, Nalewaja, Peterson, Tennefos)

BISON FOOTBALL CHAMPIONSHIP

A concurrent resolution congratulating the North Dakota State University Bison football team on winning another NCAA Division II football championship.

WHEREAS, the North Dakota State University Bison football team, coached by native North Dakotan Rocky Hager, completed an undefeated, untied 1988 season with 14 wins, capped by a victory over Portland State University in the NCAA Division II championship; and

WHEREAS, the Bison have been awarded national championships by acclamation in 1965, 1968, and 1969, and have won national championships in playoff competition in 1983, 1985, 1986, and 1988; and

WHEREAS, the Bison have established a record of 15 wins and 1 loss during their past 16 Division II playoff games, the Bison current winning streak of regular and postseason games is the longest current winning streak in NCAA Division II football, and the Bison have won more games in NCAA Division II postseason football play than any other team in history; and

WHEREAS, "Bison pride" and the "bring on the competition" attitude of the people associated with the Bison football program have produced the most successful program in NCAA Division II history, an accomplishment of which all North Dakotans can be justifiably proud;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly takes great pride and pleasure in extending to all members of the North Dakota State University Bison football team, head coach Rocky Hager and his staff, and North Dakota State University its heartiest congratulations for excellence in dedication and performance, resulting in another national championship; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the administration of North Dakota State University, all members of the North Dakota State University Bison football team, and head coach Rocky Hager and his staff.

Filed January 13, 1989

CHAPTER 809

HOUSE CONCURRENT RESOLUTION NO. 3014
(Representatives Kloubec, Schneider)
(Senators Heigaard, Olson)

LEGISLATIVE FITNESS DAY

A concurrent resolution designating January 11, 1989, as Legislative Fitness Day, and urging all appropriate state agencies to promote public awareness of the importance of physical fitness.

WHEREAS, the health and future welfare of the citizens of this state are inextricably entwined; and

WHEREAS, March 4, 1985, and March 9, 1987, were legislative fitness days in recognition of the importance of physical fitness; and

WHEREAS, to heighten our awareness of the importance of physical fitness the North Dakota Alliance for Health, Physical Education, Recreation, and Dance has again volunteered to perform a variety of health care screening and assessment services for members of the Legislative Assembly and legislative employees; and

WHEREAS, a day of physical fitness recognized as such by the Legislative Assembly will serve to promote the public's awareness of the importance of good health care practices;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That January 11, 1989, is designated as Legislative Fitness Day; and

BE IT FURTHER RESOLVED, that all appropriate state agencies are encouraged to promote public awareness of the importance of physical fitness and good health care practices.

Filed January 17, 1989

CHAPTER 810

HOUSE CONCURRENT RESOLUTION NO. 3015
(Representatives Kloubec, Schneider)
(Senators Heigaard, Olson)

CHOLESTEROL AWARENESS DAY

A concurrent resolution designating January 11, 1989, as Cholesterol Awareness Day.

WHEREAS, heart disease is one of the leading causes of death among residents of this state; and

WHEREAS, changes in lifestyle and diet may lessen the chances of the occurrence and severity of heart disease; and

WHEREAS, the North Dakota Heart Association, Medical Association, Nurses Association, Pharmacy Association, and Dietetic Association support the concept that cholesterol is a major contributor to heart disease;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That January 11, 1989, is designated as Cholesterol Awareness Day.

Filed January 17, 1989

CHAPTER 811

HOUSE CONCURRENT RESOLUTION NO. 3016
(Representatives Kloubec, Schneider, Kretschmar)
(Senators Heigaard, Olson)

PRESIDENTIAL INAUGURATION ATTENDANCE

A concurrent resolution authorizing the Speaker of the House and the majority and minority House and Senate leaders, or their designees, to attend the presidential inauguration, excusing their absence, and authorizing expenditure of moneys from the legislative appropriation necessary to cover their expenses.

WHEREAS, the inauguration of George Bush as the President of the United States will be on January 20; and

WHEREAS, the presidential inauguration symbolizes democracy in action and freedom in the selection of our nation's leaders; and

WHEREAS, harmonious relationships between the three coequal branches of government on the state and federal levels are vital to the success of our democratic society; and

WHEREAS, important decisions that may greatly alter the future course of events in North Dakota will be made by the President and the executive branch in the next four years; and

WHEREAS, the spirit of goodwill and cooperation between the various branches of state and federal government can be demonstrated by legislative representation at the presidential inauguration during this important period in North Dakota history;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Speaker of the House and the majority and minority leaders of the House and the Senate, or their designees, are authorized to attend the presidential inauguration in Washington, D.C., on January 20; and

BE IT FURTHER RESOLVED, that the House and the Senate excuse the absence of those members attending the inauguration and authorize the expenditure of such sums as are reasonably necessary from the legislative appropriation to cover their expenses incurred as a result of such attendance.

Filed January 17, 1989

CHAPTER 812

HOUSE CONCURRENT RESOLUTION NO. 3020
(Representatives G. Berg, Kingsbury, Shockman)
(Senator O'Connell)

INTERBASIN WATER TRANSFER STUDY

A concurrent resolution directing the Legislative Council to study the interbasin transfer of biota, waterfowl diseases, waterfowl wastes, and the possibility of moving Missouri River water to the James, Sheyenne, Souris, and Red Rivers.

WHEREAS, the issue of the interbasin transfer of fish, fish eggs, fish diseases, biota, and undesirable plant species has affected development and construction of the Garrison Diversion Unit Project; and

WHEREAS, the interbasin transfer of fish, fish eggs, fish diseases, biota, and undesirable plant species may be facilitated by the movement of migratory waterfowl between and among drainage basins; and

WHEREAS, waterfowl populations are adversely affected by waterfowl diseases such as avian botulism, avian cholera, and other waterfowl diseases; and

WHEREAS, concentrating waterfowl in enclosed waterfowl refuges may lead to the increased presence of waterfowl diseases and water quality problems caused by the increased volume of waterfowl wastes; and

WHEREAS, the Missouri River would be a good source of water to stabilize, freshen, and improve the water quality of the James, Sheyenne, Souris, and Red Rivers; and

WHEREAS, the Missouri River would be a good source of water to flush waterfowl refuges and thus help control waterfowl diseases and water quality problems caused by waterfowl wastes in waterfowl refuges;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the interbasin transfer of fish, fish eggs, fish diseases, biota, and undesirable plant species; the impact of migratory waterfowl moving between and among drainage basins on this transfer; waterfowl diseases; the impact of waterfowl wastes on water quality and the incidence of waterfowl diseases; and mechanisms for moving water from the Missouri River to the James, Sheyenne, Souris, and Red River basins as a solution to waterfowl disease and water quality problems in these basins; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 813

HOUSE CONCURRENT RESOLUTION NO. 3021 (Rydell, Sorensen)

OLDER WORKER EMPLOYMENT URGED

A concurrent resolution urging employers to provide employment opportunities for older workers.

WHEREAS, approximately one out of five individuals in North Dakota is 55 or more years of age; and

WHEREAS, the annual income of an estimated 28,293 of these older individuals does not exceed 125 percent of the poverty guidelines established by the United States Department of Labor; and

WHEREAS, many individuals aged 55 or older need or want meaningful employment; and

WHEREAS, while 1,500,000 workers aged 18 to 34 enter the national work force each year, 3,000,000 jobs are created each year; and

WHEREAS, older individuals offer experience, knowledge, and skills; are efficient and productive workers; are committed to the work ethic so prevalent in North Dakota workers; are loyal and committed to the goals of their employer; are cost effective to their employer; and provide a role model for younger workers;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges employers to consider the skills and experience of workers who are 55 years of age or older in order to provide more opportunities for employment of such workers; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to Job Service North Dakota and to the Greater North Dakota Association.

Filed March 31, 1989

CHAPTER 814

HOUSE CONCURRENT RESOLUTION NO. 3023 (Hoffner)

ADULT VOCATIONAL EDUCATION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of developing a comprehensive, statewide delivery system for adult vocational and technical education and industrial training.

WHEREAS, the economic downturn in the agricultural and energy sectors of the state has left many farmers and energy workers without jobs and has affected other businesses, resulting in the closing of some of those businesses or the layoff of workers who are now in need of retraining, career and personal counseling, remedial education, job search assistance, work experience, and other job-related services; and

WHEREAS, an increased emphasis on economic development in the state has placed a greater demand on vocational education programs to provide new and expanding businesses with customized training for workers; and

WHEREAS, ever-expanding technology is changing the way workers perform their jobs which requires not only an updating of current curriculum but also the upgrading of opportunities for existing workers to maintain their competitiveness in a world market economy; and

WHEREAS, the declining number of secondary students exiting the state's public schools will require that the demand for new workers be met by individuals within the existing work force who traditionally have been underserved by education and training; and

WHEREAS, although there are a number of public and private sector organizations that deliver education and training programs and services throughout the state, many of those organizations offer similar and seemingly duplicative services;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of developing a comprehensive, statewide delivery system for adult vocational and technical education and technical training, including the need to allocate additional funding for adult and industrial education and training, to expand present education and training programs to be more flexible and responsive to the needs of employed and unemployed workers, to intensify state efforts to market existing programs and services, to conduct market research to determine current and future needs of businesses, and to develop a statewide technical resource center to develop new curriculum for training programs; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

CHAPTER 815

HOUSE CONCURRENT RESOLUTION NO. 3024
(Representatives Gunsch, O'Shea)
(Senators Keller, Freborg)

STATE SURFACE MINING CONTROL URGED

A concurrent resolution urging Congress to amend the Surface Mining Control and Reclamation Act of 1977, to allow the duration of the responsibility period for revegetation to be determined by each state regulatory authority.

WHEREAS, Public Law 95-87, 30 U.S.C. 1201, known as the Surface Mining Control and Reclamation Act of 1977, provides for a fixed responsibility period for revegetation; and

WHEREAS, the necessary time for successful revegetation varies due to regional differences in soils, weather, and other conditions; and

WHEREAS, many years of reclamation experience have proven that the presently required responsibility period for revegetation is unnecessarily long for the state of North Dakota and results in lands being out of the control of landowners for extensive periods of time; and

WHEREAS, such requirements impose an unnecessary financial burden upon both the coal mining industry and the agricultural industry in North Dakota; and

WHEREAS, it is in the best interests of North Dakota to amend the law to allow the duration of the responsibility period for revegetation to be determined by each state regulatory authority:

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Congress of the United States to amend Section 515(b)(20) of the Surface Mining Control and Reclamation Act of 1977, as follows:

(20) assume the responsibility for successful revegetation, as required by paragraph (19) above, for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order time determined by the regulatory authority as necessary to assure compliance with paragraph (19) above; except in those areas or regions of the country where the annual average precipitation is twenty-six inches or less, then the operator's assumption of responsibility and liability will extend for a period of ten full years after the last year of augmented seeding, fertilizing, irrigation, or other work. Provided, That when the regulatory authority approves a long-term intensive agricultural postmining land use, the applicable five- or ten-year time period of responsibility as determined by the regulatory authority for revegetation shall commence at the

date of initial planting for such long-term intensive agricultural postmining land use: Provided further, That when the regulatory authority issues a written finding approving a long-term, intensive, agricultural postmining land use as part of the mining and reclamation plan, the authority may grant exception to the provisions of paragraph (19) above; and

BE IT FURTHER RESOLVED, that copies of the resolution be forwarded by the Secretary of State to the Secretary of the Interior, the chairman of the House Committee on Interior and Insular Affairs, the chairman of the Senate Committee on Energy and Natural Resources and to each member of the North Dakota Congressional Delegation.

Filed March 23, 1989

CHAPTER 816

HOUSE CONCURRENT RESOLUTION NO. 3025
(Representatives Kretschmar, Schatz, Kouba)
(Senator Krauter)

MISSOURI RIVER BRIDGE URGED

A concurrent resolution urging Congress to provide funds to the appropriate agency to construct a bridge over the Missouri River approximately midway between Bismarck, North Dakota, and Mobridge, South Dakota, in the vicinity of Fort Yates and Emmons County, North Dakota.

WHEREAS, the Legislative Assembly in 1929 appropriated \$130,000 for a study regarding construction of a bridge in the Fort Yates area; and

WHEREAS, the Fortieth Legislative Assembly in 1967 adopted Senate Concurrent Resolution Z urging Congress to give favorable consideration to the construction of such a bridge; and

WHEREAS, the Forty-first Legislative Assembly in 1969 adopted House Concurrent Resolution No. 45 urging Congress to give favorable consideration to United States Senate Bill 229, which would authorize the construction of the bridge; and

WHEREAS, Congress adopted Senate Bill 229, which authorized construction of the bridge as part of the 1970 Flood Control Act; and

WHEREAS, \$470,000 has been expended on site studies, bridge design, and other preparatory work as of June 1972; and

WHEREAS, no further funds have been appropriated since that time for construction of the bridge, and the bridge project is in danger of being deauthorized by law if further funds are not expended on the project; and

WHEREAS, the vast area of North Dakota and South Dakota lying between the Missouri River crossings at Bismarck, North Dakota, and Mobridge, South Dakota, a distance of over 100 miles, has been bisected by the Missouri River and Lake Oahe, requiring residents of, and travelers through, the area to travel great distances to established river crossings; and

WHEREAS, a modern bridge crossing over the Missouri River in the vicinity of Fort Yates and Emmons County, North Dakota, would be of great benefit to those engaged in agricultural activities in the area and would provide increased potential for industrial development, tourism, and recreational use of areas endowed with great natural beauty which will otherwise lie dormant; and

WHEREAS, the construction of a bridge over the Missouri River midway between Bismarck, North Dakota, and Mobridge, South Dakota, would further provide social, medical, and academic opportunities for the residents of south central North Dakota and north central South Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Congress to provide funds to the appropriate agency to construct a bridge over the Missouri River in the vicinity of Fort Yates and Emmons County, North Dakota; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the Interior, the Army Corps of Engineers, the majority leaders in the United States Senate and House of Representatives, and each member of the North Dakota Congressional Delegation.

Filed March 28, 1989

CHAPTER 817

HOUSE CONCURRENT RESOLUTION NO. 3027
(Representative Kretschmar)
(Senator Olson)

LEGISLATIVE PROCESS STUDY

A concurrent resolution directing the Legislative Council to study the legislative process, with emphasis on the appropriate use of the 80 natural days allowed for the Legislative Assembly to be in session.

WHEREAS, in 1976 the Constitution of North Dakota was amended to allow the Legislative Assembly to meet in regular session for 80 natural days and to provide that days spent in regular session need not be consecutive; and

WHEREAS, as the result of a Legislative Council study during the 1977-78 interim, no specific recommendation was made concerning the use of the "additional" 20 days as a result of the constitutional amendment changing session length from 60 legislative days to 80 natural days; and

WHEREAS, after six sessions of operating under the 80 natural day provision, alternatives to the current use of the time permitted under the constitution should be studied to determine if the efficiency of the Legislative Assembly could be increased; and

WHEREAS, various alternatives on the use of time permitted under the constitution could result in dramatic changes in the legislative process, including, but not limited to, using approximately one-half of the allotted days in each calendar year of a biennium; and

WHEREAS, all members of the Legislative Assembly, state and local governmental officials, and the public at large should have an opportunity to be heard prior to adoption of any procedure that could result in a dramatic change in the legislative process;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the legislative process, with emphasis on the appropriate use of the 80 natural days allowed for the Legislative Assembly to be in session during a biennium; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 23, 1989

CHAPTER 818

HOUSE CONCURRENT RESOLUTION NO. 3028
(Committee on Appropriations)

BLOCK GRANTS

A concurrent resolution regarding the approval of state agency use of block grant funds, and authorizing the Budget Section of the Legislative Council to hold the required legislative hearings on state plans for the receipt and expenditure of new or revised block grants as passed by Congress.

WHEREAS, the Congress of the United States enacted the Omnibus Budget Reconciliation Act of 1981 on July 29, 1981, thus creating several categories of "block" grant programs; and

WHEREAS, legislatures of the states are required to conduct public hearings; and

WHEREAS, the Appropriations Committees have held the required public hearings on block grant moneys expected for the next biennium by the Office of Management and Budget, Department of Human Services, and State Department of Health and Consolidated Laboratory Services; and

WHEREAS, the Fifty-first Legislative Assembly cannot hold public hearings on revisions to current block grants or additional block grants that may be approved by the Congress after the recess or adjournment of the Legislative Assembly; and

WHEREAS, the Legislative Assembly will not meet in regular session during 1990 and thus its public hearing responsibility for grants not approved by the Fifty-first Legislative Assembly must be delegated to a legislative entity;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the appropriation bills for the Office of Management and Budget, Department of Human Services, and State Department of Health and Consolidated Laboratory Services, as they are passed by this Legislative Assembly, are the Legislative Assembly's approval and contain directions on the use of block grant moneys for the period ending September 30, 1991; and

BE IT FURTHER RESOLVED, that the Budget Section of the Legislative Council may hold the public legislative hearings required for the receipt of block grant or other federal moneys under the Omnibus Budget Reconciliation Act of 1981 or other relevant federal statutes; and

BE IT FURTHER RESOLVED, that the Budget Section authority granted by this resolution is in effect during the period from the recess or adjournment of the Fifty-first Legislative Assembly through September 30, 1991, and the Budget Section shall utilize such methods and procedures for holding such hearings and giving notice thereof as it deems appropriate.

Filed March 28, 1989

CHAPTER 819

HOUSE CONCURRENT RESOLUTION NO. 3029
(Schatz, Tomac, Kouba, Murphy)

GARRISON UNIT ADVISORY COMMITTEE URGED

A concurrent resolution urging the Congress of the United States to create a Garrison Unit Advisory Committee to review the impact of the impoundment of the waters of the Missouri River on the social and economic base of North Dakota including the impact on Indians of the Fort Berthold and Standing Rock Indian Reservations.

WHEREAS, the Pick-Sloan Missouri River Basin Program was developed to manage the Missouri River Basin as the result of serious downstream flooding during World War II and was designed to provide irrigation, hydroelectric power, flood control, navigation, sediment abatement, fish and wildlife enhancement, municipal and industrial water supplies, and pollution control; and

WHEREAS, dams located on the Missouri River have prevented \$4 billion in flood damage at a cost of \$1.5 billion; and

WHEREAS, North Dakota has lost approximately 550,000 acres of land, \$50 million of unrecoverable lignite, \$120 million of unrecoverable oil, \$3.5 million in forest products, 2,600 jobs involving 10,000 people, and \$45 million in annual personal income due to inundation caused by Missouri River dams; and

WHEREAS, the Garrison Diversion Unit Commission was established by an Act of Congress, Public Law 98-360, to review the contemporary water development needs of the State of North Dakota; and

WHEREAS, the Garrison Diversion Unit Commission, in its final report to the Secretary of the Interior and committees of the Congress of the United States, agreed with the Congress that a moral commitment was made in 1944 to the Upper Missouri Basin States and Indian Tribes with the passage of the Pick-Sloan Missouri Basin Program, and found that North Dakota sacrificed hundreds of thousands of acres of land, much of it prime river bottom land, for the greater benefit of the Nation; and

WHEREAS, the Garrison Diversion Unit Commission further found that the Federal Government promised but has not provided assistance to replace the economic base of the State and Indian Tribes; and

WHEREAS, at the recommendation of the Garrison Diversion Unit Commission, the Secretary of the Interior on May 10, 1985, established the Garrison Unit Joint Tribal Advisory Committee to examine the impact of the impoundment of waters under the Pick-Sloan Missouri Basin Program on the Fort Berthold and Standing Rock Indian Reservations; and

WHEREAS, the Garrison Unit Joint Tribal Advisory Committee held several hearings during which it was made aware of the accuracy of the observation of the Garrison Diversion Unit Commission that the tribes of the Fort Berthold and Standing Rock Indian Reservations bore an inordinate share of the cost of implementing the Pick-Sloan Missouri Basin Program mainstream reservoirs; and

WHEREAS, certain recommendations and findings of the Garrison Unit Joint Tribal Advisory Committee were incomplete insofar as the inequities borne by individual Indians of the Fort Berthold and Standing Rock Indian Reservations and further hearings and discussions by the Garrison Unit Advisory Committee are necessary to address the needs of reservation Indians; and

WHEREAS, the inundation of rich Missouri River bottom land by the Garrison and Oahe Reservoirs and project delays have resulted in agricultural, mineral, and forestry losses not only to tribal interests but nontribal interests as well;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Congress of the United States is urged to create a Garrison Unit Advisory Committee composed of citizens affected by the impoundment of Missouri River waters and representatives of grassroot non-Indian and Indian organizations to review the impact of the impoundment of waters under the Pick-Sloan Missouri River Basin program on the social and economic base of non-Indian and Indian people and entities; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the presiding officers of the United States House of Representatives and United States Senate, to each member of the North Dakota Congressional Delegation, the United States Army Corps of Engineers, and to the Secretary of the Interior.

Filed March 28, 1989

CHAPTER 820

HOUSE CONCURRENT RESOLUTION NO. 3030
(Representatives Kloubec, Schneider)
(Senators Heigaard, Olson)

CENTENNIAL INVITATION TO PRESIDENT

A concurrent resolution inviting President Bush to visit North Dakota in recognition of the Centennial of the admittance of the states formally comprising the Dakota Territory.

WHEREAS, in 1989 the states of North Dakota, South Dakota, Montana, and Washington are celebrating their one hundredth year of statehood; and

WHEREAS, on July 4, 1889, constitutional convention delegates met at the State Capitol in Bismarck to write the Constitution governing the people of the State of North Dakota; and

WHEREAS, July 4, 1989, has been designated as Constitution Day and will be marked by events recognizing and observing the creation of the Constitution of North Dakota; and

WHEREAS, attendance at Constitution Day ceremonies by the President of the United States will provide an excellent opportunity for the citizens of North Dakota, as well as of other states, to become aware of the importance of constitutions as foundations of American government;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That President George Bush is invited to visit North Dakota and attend our Constitution Day ceremonies on July 4, 1989, on the State Capitol grounds in Bismarck, North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State provide an enrolled copy of this resolution to the North Dakota Centennial Commission for presentation to President George Bush, with copies to each member of the North Dakota Congressional Delegation.

Filed February 13, 1989

CHAPTER 821

HOUSE CONCURRENT RESOLUTION NO. 3031
(Representatives Mertens, L. Hanson, Haugen)
(Senators Nething, Stromme, Yockim)

ESSENTIAL AIR SERVICE PROGRAM

A concurrent resolution urging the Secretary of Transportation to refrain from adopting regulations to reduce essential air service levels or impede current service levels until the Congress of the United States has had the opportunity to review the department's actions and appropriate supplemental funding for the Essential Air Service program.

WHEREAS, in 1978, in response to airline deregulation, the Congress of the United States enacted the Essential Air Service program to ensure air service to isolated communities in rural America and, in 1987, Congress reaffirmed its strong commitment to these communities by enacting a 10-year extension and an intended enhancement of the program; and

WHEREAS, along with 150 other communities, the North Dakota cities of Devils Lake, Williston, and Jamestown have received air service from this program and for these communities this service is the lifeline to the national air transportation system; and

WHEREAS, the Department of Transportation has issued a Notice of Proposed Rulemaking, that if allowed to become effective, will drastically upset the program with disruption of service beginning March 1, 1989, for the cities of Devils Lake, Williston, and Jamestown, and many communities in other states; and

WHEREAS, the heartland of this country, in its struggle toward economic resurgence, requires the Essential Air Service program; and

WHEREAS, the fiscal year 1989 appropriations for the Essential Air Service program are deficient in support of 1988 service needs and lacking in support of the program at levels authorized by Congress;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Secretary of Transportation to refrain from adopting regulations to reduce air service levels or impede current service levels until the Congress of the United States has had the opportunity to review the department's actions and appropriate supplemental funding for the Essential Air Service program for fiscal year 1989; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Honorable Samuel K. Skinner, Secretary of Transportation, and to each member of the North Dakota Congressional Delegation.

Filed March 23, 1989

CHAPTER 822

HOUSE CONCURRENT RESOLUTION NO. 3032 (Kretschmar)

DISTRICT COURT CLERK FUNDING STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of providing a county option for state funding of the clerk of district court.

WHEREAS, the state currently funds the Supreme Court and the district courts and their employees, except for the clerks of the district courts; and

WHEREAS, 1989 House Bill No. 1451 proposed a county option to transfer responsibility for funding the office of clerk of district court to the state; and

WHEREAS, the availability of such an option would provide a method of alleviating the cost to the counties of supporting district court level functions; and

WHEREAS, the feasibility and desirability of state funding of clerks of district court should be determined before a change is made;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of providing a county option for state funding of the clerk of district court; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 30, 1989

CHAPTER 823

HOUSE CONCURRENT RESOLUTION NO. 3033
(Representatives Schneider, Kloubec)
(Senators Heigaard, Olson)

JUDGES' COMPENSATION STUDY

A concurrent resolution directing the Legislative Council to study and evaluate the adequacy of compensation to justices of the Supreme Court and judges of the district courts, legislators, and other elected state officials.

WHEREAS, it is important, as the needs of North Dakota grow more complex, that the state have well-qualified persons serving the state as judges, legislators, and other elected state officials; and

WHEREAS, the core issue in matters of compensation in state service is quality - the need for appropriate compensation to attract highly skilled and motivated persons who might otherwise forego public service for economic opportunities in the private sector; and

WHEREAS, inadequate compensation or dissatisfaction with compensation may be a contributing factor in the decisions or considerations of some elected state officials to leave state service;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study and evaluate the adequacy of compensation to justices of the Supreme Court and judges of the district courts, legislators, and other elected state officials; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 23, 1989

CHAPTER 824

HOUSE CONCURRENT RESOLUTION NO. 3034
(Representative Timm)
(Senator Hilken)

FEDERAL FUEL TAX INCREASE REJECTION URGED

A concurrent resolution urging the National Economic Commission and Congress to reject any proposals to increase federal excise taxes on motor fuels.

WHEREAS, the National Economic Commission reportedly is considering a large increase in the federal motor fuel tax as a way to help reduce the nation's deficit; and

WHEREAS, motor fuel is already one of the most heavily taxed commodities consumers buy; and

WHEREAS, the federal deficit is everyone's problem, not just the country's highway users; and

WHEREAS, the nation's highway transportation system is largely the result of an effective state-federal partnership utilizing federal highway trust fund money paid by highway users; and

WHEREAS, with growing congestion, heavy replacement costs for bridges, and traffic growing at an annual rate of four percent, additional highway user taxes for nonhighway purposes could seriously hamper federal and state ability to meet highway needs; and

WHEREAS, in addition to being inflationary, a large added motor fuel tax for deficit reduction would cost thousands of jobs, reduce the gross national product, and reduce federal income tax revenues; and

WHEREAS, increasing the federal motor fuel tax for nonhighway purposes would seriously erode public support for the successful pay-as-you-go federal-state highway program; and

WHEREAS, such a tax increase would fall heaviest on the working poor; and

WHEREAS, such a tax burden is inequitable in distribution in that it would cost a North Dakota resident more than twice as much as a resident of the District of Columbia, and a Tennessean more than one and one-half times as much as a resident of Hawaii; and

WHEREAS, for most people there are no practical alternatives to driving; and

WHEREAS, the public has little confidence, based on past actions, that Congress will effectively control spending;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly opposes the imposition of any additional federal excise tax on motor fuels to help balance the federal budget and urges both the National Economic Commission and Congress to reject any such proposal; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the Department of Transportation, the chairman of the House Committee on Public Works and Transportation, the executive officer of the National Economic Commission, and to each member of the North Dakota Congressional Delegation.

Filed March 13, 1989

CHAPTER 825

HOUSE CONCURRENT RESOLUTION NO. 3035 (Aas, Shockman, Kolbo)

PRIMARY ELECTION STUDY

A concurrent resolution directing the Legislative Council to study the primary election process.

WHEREAS, generally only 25 percent of the state's 400,000 eligible electors vote in the primary election; and

WHEREAS, the cost of holding the primary election has increased to approximately \$600,000 to \$700,000 per election; and

WHEREAS, candidates who are endorsed at the respective party's state convention usually run unopposed in the primary for the nomination; and

WHEREAS, the debate continues as to whether the primary should be held in June or September; and

WHEREAS, debate continues on the need for a primary and on alternative procedures for placing candidates' names on the ballot; and

WHEREAS, only one party participated in the most recent presidential preference primary, and the primary is held after the time when candidates have secured the number of delegates to assure a presidential nomination;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the primary election process, with emphasis on developing recommendations for a mechanism for selecting nominees that is timely and cost-effective; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 30, 1989

CHAPTER 826

HOUSE CONCURRENT RESOLUTION NO. 3036
(Representatives Murphy, R. Anderson, Goetz)
(Senators D. Meyer, Waldera)

LITTLE MISSOURI BAY FUNDING URGED

A concurrent resolution urging Congress to restore full funding of the Little Missouri Bay public recreation area to ensure its continued operation.

WHEREAS, the 1990 executive budget calls for the full or complete closure of eight recreation areas located on Lake Sakakawea, including a portion of the Little Missouri Bay public recreation area; and

WHEREAS, the recreation areas located on Lake Sakakawea are heavily used and greatly valued by those who depend upon the areas for recreational opportunities; and

WHEREAS, there is a critical shortage of recreational facilities on Lake Sakakawea; and

WHEREAS, the Little Missouri Bay public recreation area provides the closest and best access to Lake Sakakawea for the residents of southwestern North Dakota; and

WHEREAS, a recently constructed, federally funded, paved road would be rendered virtually useless if funding for the Little Missouri Bay public recreation area is reduced or discontinued;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Congress of the United States to restore full funding of the Little Missouri Bay public recreation area to ensure its continued operation; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the Interior, the United States Army Corps of Engineers, and to each member of the North Dakota Congressional Delegation.

Filed March 28, 1989

CHAPTER 827

HOUSE CONCURRENT RESOLUTION NO. 3037
(Representative Myrdal)
(Senator Vosper)

AGRICULTURAL EDUCATION STUDY

A concurrent resolution directing the Legislative Council to study the role of agricultural education in the public schools in this state.

WHEREAS, agriculture and agribusiness, which is North Dakota's number one industry, profoundly impacts new developing industries in this state; and

WHEREAS, all citizens of this state should possess an understanding of the food and fiber system including the current economic, social, and environmental significance of the system; and

WHEREAS, the education system in this state needs to change to ensure the future vitality of agriculture in this state; and

WHEREAS, the National Academy of Science recently completed a study on agricultural education in secondary schools entitled "Understanding Agriculture - New Directions for Education"; and

WHEREAS, the study identifies a list of principal findings and recommendations to enhance agricultural education in public schools; and

WHEREAS, the needs of the agricultural industry of this state should be addressed, in part, through agricultural education;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study agricultural education to determine what the role of agricultural education should be in the public schools in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council include in this study a study of appropriate agricultural education curriculum content; whether a system should be developed to provide occupational agricultural education and agricultural literacy; how the principal findings and recommendations of the National Academy of Science on agricultural education could be implemented in secondary schools; the extent to which agricultural education programs in secondary schools should include supervised agricultural experience, laboratory experience, Future Farmers of America activities, and instruction for adults and young farmers; whether agricultural education programs should be provided for a twelve-month period; how the changing requirements for high school graduation and increasing course requirements for college admission influence the number and characteristics of students electing to enroll in vocational agriculture in high school; and the extent that existing programs, such as vocational agriculture, Future Farmers of America, 4-H, and Agriculture in the Classroom interact to meet the agricultural education needs of this state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

CHAPTER 828

HOUSE CONCURRENT RESOLUTION NO. 3041
(Representatives Martin, O'Shea, Schatz)
(Senator Richard)

AMERICAN INDIAN AND ALASKA NATIVE YOUTH DAY

A concurrent resolution designating the fourth Wednesday of each September through the year 2000 to be American Indian and Alaska Native Youth Day and urging the communities of North Dakota to support and participate in appropriate activities.

WHEREAS, the United National Indian Tribal Youth organization has instituted a nationwide campaign to enlist all sectors of society in helping vulnerable youth achieve social and economic social sufficiency, and to fulfill their potential as viable, contributing members of American society; and

WHEREAS, the Congress of the United States has annually designated Native American Heritage Week as the last week of September each year; and

WHEREAS, Indian people of North Dakota, and our American Indian youth have annually celebrated that important week by developing awareness programs and by establishing goals for their tribe, their communities, their reservations, and the state; and

WHEREAS, the campaign for Youth 2000 has very important goals for American Indian and Alaska Native Youth nationwide that are supported by Indian people throughout the nation and that require support by all citizens in order to be accomplished. The goals include employment and economic self-sufficiency, improved literacy and education attainment, reduction in the incidence of teenage pregnancy, lifestyles free from substance abuse, and reduction of violent and accidental injuries and death; and

WHEREAS, the Indian youth of North Dakota have been suffering extremely high incidence of alcoholism and drug abuse, suicide, teenage pregnancy, and dropping out of high school, with such incidence being oftentimes twice as high as the national average; and

WHEREAS, the four Indian reservations in North Dakota and off reservation Indian groups have been working to motivate our Indian youth to believe in themselves, make the most of their potential, value a healthy mind and body, and become self-sufficient, productive members of their communities and of their state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly recognizes and supports the American Indian youth of North Dakota and the UNITY program in achieving their goals and designates the fourth Wednesday of each year through the year 2000 to be American Indian and Alaska Native Youth Day and urges North Dakota communities to support and participate in appropriate activities.

Filed March 23, 1989

CHAPTER 829

HOUSE CONCURRENT RESOLUTION NO. 3042
(Hoffner, Solberg, Payne, Oban)

MOTORCYCLE SAFETY AND AWARENESS MONTH

A concurrent resolution urging the Governor to designate May 1989 as Motorcycle Safety and Awareness Month.

WHEREAS, motorcycles are an important means of transportation and a source of recreation; and

WHEREAS, it is important for motorcyclists to develop sound riding skills and safety habits and it is important for all motorists to be aware of the vulnerability of motorcyclists to unsafe drivers; and

WHEREAS, educational programs promoting motorcycle safety deserve special recognition; and

WHEREAS, in the month of May there is an annual renewal of motorcycling enthusiasm;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Governor to designate May 1989 as Motorcycle Safety and Awareness Month and to call upon all government agencies and the people of this state to observe the month with appropriate programs, ceremonies, and activities; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Governor.

Filed March 23, 1989

CHAPTER 830

HOUSE CONCURRENT RESOLUTION NO. 3043
(A. Olson, Urlacher, O. Hanson, Hoffner)

ATMOSPHERIC RESOURCE PROGRAM STUDY

A concurrent resolution directing the Legislative Council to study the North Dakota Atmospheric Resource Management Program.

WHEREAS, the North Dakota Atmospheric Resource Board is currently operating a weather modification program in six counties in North Dakota; and

WHEREAS, North Dakota has the longest running summer modification program of any state in the United States; and

WHEREAS, North Dakota has established itself as a national, international, and world leader in the areas of weather modification, rainfall enhancement, and hail suppression, providing assistance to other states in the United States and to countries throughout the world; and

WHEREAS, crop hail damage in those counties with an ongoing operation have decreased by over forty percent, and research and operation analysis has clearly established that management of atmospheric resources can provide effective results and benefits, both in the areas of rainfall enhancement and hail suppression; and

WHEREAS, the North Dakota Thunderstorm Project is a national research program that will be conducted by the North Dakota Atmospheric Resource Board in cooperation with the National Oceanic and Atmospheric Administration and a variety of other organizations and universities, during the summer of 1989 in North Dakota, and will provide millions of dollars of direct benefits and additional millions of dollars of indirect benefits to the North Dakota economy; and

WHEREAS, technology has advanced significantly over the past few years and has provided new opportunities for management of atmospheric resources; and

WHEREAS, the North Dakota Atmospheric Resource Management Program should be the subject of a comprehensive study for the purpose of reviewing its effectiveness, the results, the opportunity for economic development and enhancement, and whether the Atmospheric Resource Management Program should be continued, modified, or established as a statewide program;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the state's Atmospheric Resource Management Program; and

BE IT FURTHER RESOLVED, that in conjunction with the study the Legislative Council review the economic impact of the Atmospheric Resource Management Program; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 23, 1989

CHAPTER 831

HOUSE CONCURRENT RESOLUTION NO. 3044
(Nowatzki, Nicholas)

FEDERAL AGENCIES URGED TO PARTICIPATE IN CENTENNIAL TREE PROGRAM

A concurrent resolution urging federal agencies owning real property in North Dakota to participate in the North Dakota Centennial 100,000,000 Tree Project.

WHEREAS, trees have many environmental benefits and provide habitat for wildlife; and

WHEREAS, less than one percent of the land area of North Dakota consists of forests; and

WHEREAS, trees provide natural beauty and diversification to the North Dakota landscape; and

WHEREAS, public lands provide a unique opportunity to increase wildlife production and foster additional recreational activities; and

WHEREAS, selected trees and shrubs provide the type of cover and food sources that many wildlife species prefer; and

WHEREAS, planned tree planting can provide winter protection during months of inclement weather; and

WHEREAS, many public lands are open to the general public and tree planting would enhance the desirability of the use of these areas; and

WHEREAS, tree planting enhances the shorelines of lakes for recreational uses; and

WHEREAS, the cooperation of federal agencies with the North Dakota Centennial 100,000,000 Tree Project offers the possibility of achieving large block acreages of tree plantings to replace older timber culture plantings made in the early 1900's; and

WHEREAS, many federal agencies have long-established tree planting programs and have increased their emphasis on tree planting during the observance of the Centennial of North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges federal agencies owning real property in North Dakota to participate in the North Dakota Centennial 100,000,000 Tree Project during the next decade; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the United States Fish and Wildlife Service, the United States Army Corps of Engineers, the United States Forest Service, the United States Bureau of Land Management, and the United States Bureau of Reclamation.

Filed March 23, 1989

CHAPTER 832

HOUSE CONCURRENT RESOLUTION NO. 3045
(Representatives Oban, Myrdal, B. Anderson)
(Senators J. Meyer, Peterson, Waldera)

YEAR OF THE YOUNG READER

A concurrent resolution urging the Governor of North Dakota to join with the President of the United States to declare 1989 as the Year of the Young Reader.

WHEREAS, books and reading are the basic nourishment of a growing mind and the foundation of a child's future education and enrichment; and

WHEREAS, developing children into readers today is the best way of ensuring a literate and informed citizenry tomorrow; and

WHEREAS, the Book Industry Study Group and others have reported a decline in book reading among young people in recent years; and

WHEREAS, since 1983 the National Commission on Excellence, the Commission on Reading, and the Librarian of Congress have urged this nation to give renewed attention to encouraging a love of books and reading among our young people; and

WHEREAS, the Legislative Assembly recognizes the efforts made by First Lady Barbara Bush in the area of literacy and in encouraging young children to read;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Governor of North Dakota to join with the President of the United States to declare 1989 as the Year of the Young Reader and to issue a proclamation to encourage parents, educators, librarians, government officials, members of the book community, corporations, associations, and the people of the state to observe the Year of the Young Reader with appropriate programs, ceremonies, and activities aimed at giving our children and young adults the gift, the joy, and the promise of reading; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded by the Secretary of State to the Governor.

Filed April 5, 1989

CHAPTER 833

HOUSE CONCURRENT RESOLUTION NO. 3048
(Representatives Graba, Hoffner)
(Senator Schoenwald)

BOILER OPERATOR LICENSING STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of requiring boiler operators to be licensed.

WHEREAS, North Dakota does not require a person to be licensed to operate boilers; and

WHEREAS, adequately trained and qualified boiler operators are necessary for the safe and efficient operation and maintenance of boilers; and

WHEREAS, the Fiftieth Legislative Assembly considered but did not adopt House Bill No. 1440, which would have required operators of boilers to be licensed; and

WHEREAS, unqualified and untrained boiler operators are an increased liability risk;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of requiring boiler operators to be licensed; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 834

HOUSE CONCURRENT RESOLUTION NO. 3049
(Representatives V. Thompson, Vander Vorst)
(Senators Langley, W. Meyer)

BANK OF NORTH DAKOTA LOAN PROGRAM STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of consolidating the various agricultural loan programs administered by the Bank of North Dakota.

WHEREAS, there are a number of agricultural loan programs administered by the Bank of North Dakota; and

WHEREAS, those programs include the farm operating loan program under North Dakota Century Code Chapter 6-09.9, the beginning farmer loan guarantee program under Chapter 6-09.8, the family farm loan program under Chapter 6-09.11, the beginning farmer loan program under Section 6-09-15.5, and the issuance of tax-exempt industrial revenue bonds (agribonds) to provide farm loans at low market interest rates under Chapter 4-36; and

WHEREAS, each of these loan programs has varying qualifying requirements, borrowing limitations, proceed use restrictions, and repayment and interest rate terms; and

WHEREAS, some of the programs authorize the Bank to purchase participation interests in loans made by local lenders; and

WHEREAS, confusion on the part of local lenders caused by the number of programs and the variety of terms and conditions of each discourages some lenders from participating in the programs;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of consolidating the various agricultural loan programs administered by the Bank of North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 30, 1989

CHAPTER 835

HOUSE CONCURRENT RESOLUTION NO. 3050
(Representatives D. Larson, Sorensen, Timm)
(Senators Todd, Olson, Nalewaja)

GOVERNMENTAL FEES STUDY

A concurrent resolution directing the Legislative Council to study the fees charged by agencies, boards, commissions, departments, and other instrumentalities of the state and its political subdivisions.

WHEREAS, state law allows agencies, boards, commissions, departments, and other instrumentalities of the state and its political subdivisions to charge fees for licensing or providing services; and

WHEREAS, the fees charged have been set through piecemeal legislative action or by determination of the various agencies, boards, commissions, departments, or other instrumentalities; and

WHEREAS, much of the revenue generated through those fees is retained by the various agencies, boards, commissions, departments, or instrumentalities and not deposited in the general fund in the state treasury; and

WHEREAS, bills being considered by the Fifty-first Legislative Assembly provide for over \$12 million in fee increases;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the fees charged by agencies, boards, commissions, departments, and other instrumentalities of the state and its political subdivisions; and

BE IT FURTHER RESOLVED, that the Legislative Council include in this study a review of the purposes of the fees; the desirability and adequacy of the fees; whether existing state law provides a means of accounting for the fees; whether special funds are necessary for the fees collected; whether the fees should be deposited in the general fund or special funds; and whether the revenue raised from fees should be appropriated as revolving or continuing appropriations; and

BE IT FURTHER RESOLVED, that the Legislative Council reports its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 23, 1989

CHAPTER 836

HOUSE CONCURRENT RESOLUTION NO. 3052 (R. Berg, Gorman)

BOARD AND COMMISSION REVIEW STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of periodically and systematically reviewing all statutorily created boards, commissions, committees, and councils to determine the necessity of those bodies.

WHEREAS, there is a proliferation of statutorily created boards, commissions, committees, and councils with varying composition and authority; and

WHEREAS, the duties and responsibilities of the various boards, commissions, committees, and councils range from advisory to regulatory; and

WHEREAS, it is in the public interest to conduct periodic reviews of the necessity of, and the benefits derived from, the various statutorily created boards, commissions, committees, and councils; and

WHEREAS, "sunset" laws are used by some states to ensure the periodic and systematic legislative review of various statutorily created entities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of periodically and systematically reviewing all statutorily created boards, commissions, committees, and councils to determine the necessity of those bodies; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 23, 1989

CHAPTER 837

HOUSE CONCURRENT RESOLUTION NO. 3053
(Nicholas)

MALTING BARLEY GRADING STUDY

A concurrent resolution directing the Legislative Council to study the problems associated with the grading and purchasing of barley for malting purposes.

WHEREAS, the malting and brewing industry generally uses the United States Federal Grain Inspection Service grading factors in purchasing barley for malting purposes; and

WHEREAS, an inspection by an elevator operator based on federal grain inspection standards which indicates that the barley is a suitable type for malting purposes may be rejected by the malting and brewing industry based on nongrading factors such as protein content, germination, and varietal purity; and

WHEREAS, an elevator operator that pays producers based on the operator's determination that the barley is of the type suitable for malting may lose money if the malting industry determines, based on its own inspection, that the barley is not suitable for malting; and

WHEREAS, this cost to the elevator is ultimately passed on to the producer;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the problems associated with the grading and purchasing of barley for malting purposes; and

BE IT FURTHER RESOLVED, that the Legislative Council obtain information regarding such problems from the North Dakota Barley Council, the North Dakota Grain Dealers Association, the North Dakota Farm Bureau, the North Dakota Farmers Union, and other interested parties; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 23, 1989

CHAPTER 838

HOUSE CONCURRENT RESOLUTION NO. 3055
(Representatives Wald, Kloubec, Schneider)
(Senators Maixner, Olson)

MEDICAID ADMINISTRATION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of the state contracting with a fiscal intermediary for administration of the Medicaid program.

WHEREAS, the state of North Dakota currently spends significant funds relating to the administration and auditing of Medicaid payments; and

WHEREAS, a number of states have selected the option of using a fiscal intermediary to handle program eligibility determinations and payments for the Medicaid program; and

WHEREAS, the use of a fiscal intermediary for the Medicaid program could result in a cost savings for the state of North Dakota; and

WHEREAS, the state needs to explore all options for cost savings and efficiencies due to limited state resources;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of the state contracting with a fiscal intermediary to provide Medicaid eligibility determinations and program payments; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 839

HOUSE CONCURRENT RESOLUTION NO. 3056
(Representatives Mertens, Kloubec, Schneider)
(Senators Olson, Heigaard)

LIMIT FEDERAL TAX ON STATE AND LOCAL BONDS

A concurrent resolution urging Congress to pass and present to the states for ratification a constitutional amendment limiting federal taxation of state and local obligations.

WHEREAS, recent action of the United States Supreme Court has removed the presumed protection of state and local bonds from federal taxation; and

WHEREAS, increased financial responsibilities placed on state and local governments by federal legislation makes state and local borrowing a virtual necessity; and

WHEREAS, subjecting income from state and local debt to federal income taxes will increase the cost of state and local borrowing; and

WHEREAS, increased cost of borrowing for state and local governments does a substantial disservice to state and local governments and their taxpayers which could be avoided by providing for federal income tax exemption of interest on state and local obligations; and

WHEREAS, the United States Senate is considering Joint Resolution 28, which would establish the constitutional status of state and local obligations as exempt from federal taxation;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Congress of the United States to approve Senate Joint Resolution 28 or a similar legislative proposal for a constitutional amendment limiting federal taxation of state and local obligations and present the constitutional amendment to the states for ratification; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to United States Senator William Roth, sponsor of Senate Joint Resolution 28, and to each member of the North Dakota Congressional Delegation.

Filed April 7, 1989

CHAPTER 840

HOUSE CONCURRENT RESOLUTION NO. 3057
(Marks, Wentz, Skjervén)

FARM PRODUCT FINANCING STUDY

A concurrent resolution directing the Legislative Council to study the laws relating to state and local filing of liens, security interests, financing statements, and continuation statements relating to farm products.

WHEREAS, a person with a lien or security interest in a farm product must file notice of the lien or security interest with the Secretary of State to protect the person's interest in the farm product from purchasers of the product; and

WHEREAS, a person with a lien or security interest in a farm product is also required to file notice of the lien or security interest with a county register of deeds to perfect the persons' interest against nonpurchasers claiming an interest in the product; and

WHEREAS, this double filing is a burden on farmers and on lienholders and secured parties; and

WHEREAS, many farmers are not notified by lienholders or security interest holders that the farmers can demand that a release of a repaid debt be filed with the Secretary of State; and

WHEREAS, whenever a release is not filed, any check issued will be issued jointly to the farmer and a secured party or lienholder listed on the central filing list, even though the farmer may have repaid the farmer's debt to that secured party or lienholder; and

WHEREAS, many federal agricultural lending agencies delay making agriculture loans until they have checked the central filing system list prepared by the Secretary of State;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the laws relating to state and local filing of liens, security interests, financing statements, and continuation statements relating to farm products; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 23, 1989

CHAPTER 841

HOUSE CONCURRENT RESOLUTION NO. 3058
(Representatives Oban, Kretschmar, Hoffner)
(Senators Heinrich, Holmberg, Maixner)

CHARITABLE GAMING STUDY

A concurrent resolution directing the Legislative Council to study the uses to which the proceeds of charitable gaming are devoted and the laws governing charitable gaming.

WHEREAS, Article XI, Section 25, of the Constitution of North Dakota was amended by the voters in 1976 to allow games of chance to be conducted by certain nonprofit organizations if the entire net proceeds of the games are devoted to educational, patriotic, fraternal, religious, or other public-spirited uses; and

WHEREAS, games of chance have been conducted under this authority for more than 11 years; and

WHEREAS, no detailed review has been conducted of actual uses to which proceeds of games of chance are being devoted and a Legislative Council study of the status and impact of charitable gaming has not been conducted since the 1985-86 interim and since that interim substantial changes have been made in the laws governing charitable gaming; and

WHEREAS, it is a legislative responsibility to ascertain whether the uses to which proceeds of charitable gaming are devoted is consistent with the intent of the electors in adopting the constitutional provision allowing charitable gaming and to determine whether the laws in place adequately govern the conduct of charitable gaming;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the uses to which the proceeds of charitable gaming are devoted and the laws governing charitable gaming, with emphasis on charitable gaming laws enacted since 1987; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed April 6, 1989

CHAPTER 842

HOUSE CONCURRENT RESOLUTION NO. 3059
(Representatives Wentz, Rydell)
(Senators J. Meyer, Stenehjem)

UNINSURED HEALTH CARE STUDY

A concurrent resolution directing the Legislative Council to study the health care insurance needs of uninsured and underinsured persons.

WHEREAS, approximately 37 million Americans are either uninsured or underinsured with respect to their health care needs; and

WHEREAS, an estimated 70 percent of those persons live in households with at least one employed person; and

WHEREAS, the largest segment of the uninsured and underinsured population is children; and

WHEREAS, the percentage of uninsured or underinsured persons who live below the federal poverty level is increasing, in part, because states have been unable to adjust financial eligibility guidelines; and

WHEREAS, other states have adopted various approaches to ensuring the availability of adequate health care insurance coverage for uninsured and underinsured persons; and

WHEREAS, methods of meeting health care needs of uninsured and underinsured persons may require the cooperative efforts of health care providers, third-party payors, employers, and state and local governments;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the health care insurance needs of uninsured and underinsured persons, including a review of the legislative approaches considered by other states, and methods of meeting these needs through alternatives including cooperative efforts involving health care providers, third-party payors, employers, and state and local governments; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 30, 1989

CHAPTER 843

HOUSE CONCURRENT RESOLUTION NO. 3060
(Representative Goetz)
(Senator Satrom)

TFFR BENEFITS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of providing level retirement benefits to all retirees under the Teachers' Fund for Retirement.

WHEREAS, the Teachers' Fund for Retirement utilizes a variety of retirement benefit formulas that provide different levels of benefits for fund members; and

WHEREAS, over 50 percent of the persons receiving retirement benefits under the Teachers' Fund for Retirement receive retirement benefits based on benefit formulas created under the former Teachers' Insurance and Retirement Fund, the obligations of which were assumed by the Teachers' Fund for Retirement in 1971; and

WHEREAS, most retirees receiving benefits based on benefit formulas created under the former Teachers' Insurance and Retirement Fund do not receive Social Security benefits and receive an inadequate level of retirement benefits; and

WHEREAS, although recent retirement benefit increases for retirees under the Teachers' Fund for Retirement have been beneficial, those benefit increases were not sufficient to provide retirees a standard of living commensurate with service they provided to the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of providing level retirement benefits to all retirees under the Teachers' Fund for Retirement; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 30, 1989

CHAPTER 844

HOUSE CONCURRENT RESOLUTION NO. 3062
(Mertens, Kelly)

STATE AGENCY PROFESSIONAL FEES STUDY

A concurrent resolution directing the Legislative Council to study the payment of occupational or professional licensing fees by state agencies and institutions.

WHEREAS, most state agencies and institutions pay the fees for the issuance of occupational or professional licenses required to be held by their employees; and

WHEREAS, proposed legislation considered by the 1987 and 1989 Legislative Assemblies would have prohibited state agencies and institutions from paying occupational or professional licensing fees on behalf of their employees; and

WHEREAS, there may be a lack of uniformity among state agencies and institutions with respect to paying the fees for the issuance of occupational or professional licenses required to be held by their employees; and

WHEREAS, compensating employees in lieu of paying occupational or professional license fees would affect state agency pay practices, Social Security taxes, and retirement contributions and benefits; and

WHEREAS, an alternative to prohibiting state agencies and institutions from paying occupational or professional licensing or registration fees is to exempt state employees from the payment of occupational or professional licensing fees;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the payment of occupational or professional licensing fees by state agencies and institutions; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 23, 1989

CHAPTER 845

HOUSE CONCURRENT RESOLUTION NO. 3063
(Kingsbury, Peterson)

STATE MOTOR VEHICLE SYSTEM STUDY

A concurrent resolution directing the Legislative Council to study the cost effectiveness of maintaining a central management system for state motor vehicles.

WHEREAS, a central vehicle management system within the State Highway Department was created in 1983 to regulate the operation, maintenance, and management of all motor vehicles owned or leased by the state; and

WHEREAS, each state agency, institution, department, board, bureau, and commission unless exempted by statute or by the State Highway Commissioner must use this system; and

WHEREAS, the cost of state employee travel is rising;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the cost effectiveness of maintaining a central vehicle management system for state motor vehicles and determine whether an alternate system for state employee travel may be more cost effective; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 23, 1989

CHAPTER 846

HOUSE CONCURRENT RESOLUTION NO. 3064
(Representatives Oban, Lindgren, Scherber)
(Senators Keller, Lips, Schoenwald)

TELECOMMUNICATION DEREGULATION STUDY

A concurrent resolution directing the Legislative Council to study the advantages and disadvantages of deregulating telecommunications.

WHEREAS, the first phase of telephone deregulation culminating in the 1984 Bell System breakup ended most regulation of long distance rates and equipment prices, but left most local rates and services under the control of state utility commissions; and

WHEREAS, at least 15 states have approved local telephone deregulation in various forms; and

WHEREAS, some states, such as Nebraska, have enacted legislation totally deregulating local telephone services for home and business; and

WHEREAS, during the 1989 legislative session a number of bills were introduced proposing significant regulatory reforms to the telephone industry in this state; and

WHEREAS, deregulation of telecommunications could provide an incentive for the industry to provide new services, result in competitive pricing services, attract new telecommunications industries to this state, and encourage technological innovations; and

WHEREAS, the competitive benefits of deregulation might not be experienced by all classes of ratepayers, especially those in rural areas; and

WHEREAS, deregulation of the telephone industry is complex, and it is important that the Legislative Assembly formulate an overall policy before dealing with specific issues;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the advantages and disadvantages of deregulating telecommunications; and

BE IT FURTHER RESOLVED, that the Legislative Council, as part of this study, review the operation and effect of any legislation enacted during the 1989 session relating to telecommunications regulatory reforms; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 847

HOUSE CONCURRENT RESOLUTION NO. 3065
(Jensen, Sorensen, Wald)

STATE FACILITIES SPACE STUDY

A concurrent resolution directing the Legislative Council to study the cost and utilization of office space and other facilities leased by state agencies and institutions.

WHEREAS, 12 state agencies with facilities in Bismarck alone lease 78,064 square feet of office space and other facilities; and

WHEREAS, the cost of leasing this space for the 1987-89 biennium is \$1,324,244 or approximately 71 cents per square foot per month; and

WHEREAS, human services centers lease a substantial amount of space throughout the state; and

WHEREAS, leasing costs are rising due to increasing space needs and escalation clauses contained within leases; and

WHEREAS, the square footage of leased space may not be appropriate for its intended use or the cost may be higher than other space available on the market;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the cost and utilization of office space and other facilities leased by state agencies and determine whether changes are necessary to reduce costs and improve utilization; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 848

HOUSE CONCURRENT RESOLUTION NO. 3066
(Shockman, V. Thompson, Brokaw, O'Shea, Kingsbury)

AGRICULTURAL PRODUCTS STUDY

A concurrent resolution directing the Legislative Council, in cooperation with the members of the North Dakota Congressional Delegation, to study the adverse economic impact that changing conditions in marketing, processing, and retailing of agricultural products are having on producers of agricultural products and consumers.

WHEREAS, the production of agricultural products is the largest and most important industry in this state; and

WHEREAS, agricultural producers produce renewable wealth or primary energy, which is the food that we need for life; and

WHEREAS, the agricultural industry creates the wealth that fuels our rural economy and in turn filters up through the rest of our national economy to keep it healthy and strong; and

WHEREAS, the present system of marketing, processing, and distributing food in this state and in the United States is drastically changing as a result of the consolidations, buyouts, and mergers of numerous food conglomerates; and

WHEREAS, the Chicago futures pits are the target of a major federal investigation that has accumulated evidence of widespread questionable trading practices that may have an adverse impact on agricultural producers; and

WHEREAS, agricultural market forecasts, projections, and other sources of information have a profound effect on farm commodity marketing, commodity prices, and crop planting decisions;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council, in cooperation with the members of the North Dakota Congressional Delegation, study the adverse economic impact that changing conditions in marketing, processing, and retailing agricultural products are having on producers of agricultural products and consumers; and

BE IT FURTHER RESOLVED, that the Legislative Council include in this study a review of the various sources and accuracy of market information disseminated to agricultural producers; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 849

HOUSE CONCURRENT RESOLUTION NO. 3067
(Representatives Wald, Mertens)
(Senator Tallackson)

INSURANCE COMMISSIONER ACTUARY STUDY

A concurrent resolution directing the Legislative Council to study whether the Commissioner of Insurance should employ a property and casualty actuary.

WHEREAS, the Commissioner of Insurance regulates the insurance industry to protect the interests of insureds and to ensure the integrity of insurers; and

WHEREAS, the federal Liability Risk Retention Act exempts certain casualty insurers from state regulation; and

WHEREAS, the extent to which this state may regulate these insurers is unclear because of the lack of clarity of federal law and the lack of applicable case law; and

WHEREAS, the Commissioner of Insurance does not employ an actuary to review property and casualty insurers' rates and supporting financial data for their appropriateness;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study whether the Commissioner of Insurance should employ a property and casualty actuary; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 31, 1989

CHAPTER 850

HOUSE CONCURRENT RESOLUTION NO. 3068
(Hoffner, D. Larson)

CONTROLLED SUBSTANCE DIVERSION STUDY

A concurrent resolution directing the Legislative Council to study the nature, scope, and effect of efforts to prohibit the illicit diversion or use of controlled substances in this state.

WHEREAS, illicit use of controlled substances in this state is evidenced by the increasing availability of cocaine and by the increasing numbers of arrests and property seizures for violations of the controlled substances laws; and

WHEREAS, methods to combat illicit diversion or use of controlled substances include education, law enforcement, treatment, and public awareness and these methods are employed at many levels by such diverse agencies and entities as the Attorney General, Superintendent of Public Instruction, Department of Human Services, Department of Health and Consolidated Laboratories, state and local law enforcement agencies, and the courts; and

WHEREAS, current methods and efforts may not be adequate to deter the illicit diversion or use of controlled substances; and

WHEREAS, the principles motivating these diverse methods and efforts should be clearly articulated and the efforts implemented in a focused and coordinated manner;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the nature, scope, and effect of efforts to prohibit the illicit diversion or use of controlled substances in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 23, 1989

CHAPTER 851

HOUSE CONCURRENT RESOLUTION NO. 3069
(Representatives Oban, Gates, Ulmer)
(Senators O'Connell, Nalewaja)

SPECIAL EDUCATION DELIVERY STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of adopting an alternative method of delivery of special education and related services to developmentally disabled students in this state.

WHEREAS, one of the mandates of Public Law 94-142 is that education must occur in the least restrictive environment, which requires students with handicapping conditions to be educated to the maximum extent appropriate, with nonhandicapped students; and

WHEREAS, the delivery of special education and related services to developmentally disabled students in the past has primarily resulted in education systems that segregate those students from nonhandicapped students; and

WHEREAS, under current trends in the delivery of special education, integration has taken on a new meaning resulting in the inclusion of developmentally disabled students with nonhandicapped students in the same classrooms; and

WHEREAS, there are currently programs in school districts in this state that are integrating developmentally disabled students by placing them in the same classrooms as nonhandicapped students; and

WHEREAS, under these programs, students that formerly would have been placed in a self-contained classroom are attending regular classes with nonhandicapped students; and

WHEREAS, teachers in these programs have reported that the developmentally disabled students attending the regular classrooms appear more attentive, verbal, and happier; and

WHEREAS, the integration of students with handicapping conditions into regular classrooms may be a more efficient way to serve children with low incidence handicaps in rural areas; and

WHEREAS, such integration may be a beneficial way to deliver the social skills curriculum needed by many students with handicaps; and

WHEREAS, such integration also presents a challenging and rewarding learning experience for nonhandicapped students; and

WHEREAS, many other successful models of community integration currently exist across the country and could be implemented in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of adopting an alternative method of delivering special education and related services to handicapped students in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council include in this study a study of the impact of adopting an alternative method of special education delivery on both the state and local school districts, including the implications with regard to funding and staffing; and

BE IT FURTHER RESOLVED, that the Legislative Council also include in this study a study of the role of the state and local school districts with regard to providing services in the least restrictive environment; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 30, 1989

CHAPTER 852

HOUSE CONCURRENT RESOLUTION NO. 3070 (Oban, Soukup)

OPEN BOTTLE LAW STUDY

A concurrent resolution directing the Legislative Council to study the operation and effect of the state's open bottle law.

WHEREAS, the state's open bottle law, North Dakota Century Code section 39-08-18, prohibits the consumption or possession of open containers of alcoholic beverages while in a motor vehicle and penalizes not only those who consume or possess the beverages but also the owner or operator who allows an open container of alcoholic beverages to be kept in the motor vehicle; and

WHEREAS, this broad liability threatens the viability of such efforts as designated driver programs by penalizing the nondrinking, nonpossessing operator for the actions of others in the motor vehicle; and

WHEREAS, House Bill No. 1654 was introduced in the 1989 Legislative Assembly to address these concerns; and

WHEREAS, the open bottle law should be reviewed to determine if a more narrowly tailored law would address the situations contemplated under the present law without jeopardizing such efforts as designated driver programs;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the operation and effect of the state's open bottle law; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 23, 1989

CHAPTER 853

HOUSE CONCURRENT RESOLUTION NO. 3071 (Kloubec)

MOTOR VEHICLE DEALER LICENSING STUDY

A concurrent resolution directing the Legislative Council to study the adequacy and enforcement of motor vehicle dealer licensing laws.

WHEREAS, state law establishes certain requirements and responsibilities relating to motor vehicle dealers, including maintaining adequate business, repair, and service facilities; proper signing; public telephone listings; and the collection of excise tax, license, and title fees; and

WHEREAS, numerous used motor vehicle dealers fail to comply with some or all of these requirements and thereby gain an unfair competitive advantage over other dealers; and

WHEREAS, there may be insufficient staff and funding for the Motor Vehicle Department to ensure efficient and increased enforcement of dealer licensing laws; and

WHEREAS, the adequacy of current motor vehicle dealer licensing laws, particularly as they apply to used motor vehicle dealers and vehicle leasing operations, and the method and effect of present enforcement efforts should be reviewed to ensure that the laws serve their intended purpose, all dealers comply with the laws, and consumers are protected against inferior products or fraudulent practices;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the adequacy and enforcement of motor vehicle dealer licensing laws; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed April 11, 1989

CHAPTER 854

HOUSE CONCURRENT RESOLUTION NO. 3073
(Representative W. Williams)
(Senators Maxson, Olson)

PRESCRIPTION DRUG REPORTING STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a prescription drug reporting center.

WHEREAS, prescription drug abuse is an often ignored but increasing form of chemical addiction and abuse; and

WHEREAS, a prescription drug reporting center could act as a depository for information relating to all prescriptions issued, including the date of issue, the type of drug issued, whether the prescription is refillable or nonrefillable, and the prescribing physician; and

WHEREAS, such a central depository of information would be a valuable asset in identifying those who are abusing prescription drugs so that they may be referred to appropriate care facilities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of establishing a prescription drug center for the reporting of controlled substances abuse, including reporting procedures by pharmacies, identification of the entities that would have access to reported information for followup and investigation, location of the center, and estimated costs of implementation and potential sources of funding; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 855

HOUSE CONCURRENT RESOLUTION NO. 3074
(Representatives G. Berg, Brokaw, Kingsbury)
(Senators Dotzenrod, Thane, Nelson)

TYPE I WETLANDS STUDY

A concurrent resolution directing the Legislative Council to study Type I wetlands.

WHEREAS, Type I wetlands are seasonally flooded basins or flats and the soil of Type I wetlands is covered with water or is waterlogged during variable seasonable periods but is usually well-drained during much of the growing season; and

WHEREAS, Type I wetlands are generally found on land that has been used for farming rather than on unbroken land or rangeland; and

WHEREAS, under the swampbuster provisions of the Food Security Act of 1985, farmers who use Type I wetlands for agricultural purposes are ineligible to receive benefits from or participate in any federal program including price supports, crop insurance, or disaster payments; and

WHEREAS, it may be necessary to monitor Type I wetlands placed in the conservation reserve program under 10-year contracts to determine whether the wetlands disappear when this land is no longer farmed;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study Type I wetlands in this state, including whether or not Type I wetlands that are created as a result of farming should not be included in the swampbuster provisions of the Food Security Act of 1985; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 856

HOUSE CONCURRENT RESOLUTION NO. 3076 (Committee on Appropriations)

MOTORBOAT FEES STUDY

A concurrent resolution directing the Legislative Council to study motorboat license fees and the use and allocation of the game and fish operating fund's interest income.

WHEREAS, license fees are charged against all motorboats in the state; and

WHEREAS, the amount of the license fee is based upon the size of the boat and not the value of the boat; and

WHEREAS, the amount collected from motorboat license fees was \$399,877 for the 1985-87 biennium; and

WHEREAS, revenue from license fees is in part used for providing matching funds for construction and installation of boat launching facilities; and

WHEREAS, there is a need for additional boating facilities due to the increasing popularity of boating and the effects of the recent drought; and

WHEREAS, a portion of the game and fish operating fund's interest income is from motorboat license fees; and

WHEREAS, all of the game and fish operating fund's interest income is deposited in the deer depredation fund;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the appropriateness of the amount and the current basis for the determination of motorboat license fees and the use and allocation of the game and fish operating fund's interest income; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed April 6, 1989

CHAPTER 857

HOUSE CONCURRENT RESOLUTION NO. 3078
(Hoffner)

ECONOMIC DEVELOPMENT STUDY

A concurrent resolution directing the Legislative Council to study economic development efforts in this state.

WHEREAS, promotion of the state's economy and expansion of employment opportunities for North Dakota citizens is necessary for the future prosperity of this state; and

WHEREAS, although historically the state's population was predominantly rural and the majority of the state's employees were engaged in agricultural-related industries, a steady migration of persons to urban areas in the state now requires a diversified economy; and

WHEREAS, because it is estimated that the state will lose 48,000 jobs by the year 2000, it is important that public and private efforts in economic development be directed in a coordinated and cooperative manner, and that the Legislative Assembly offer its full support and cooperation in those efforts;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the economic development efforts in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council include in this study a review of the study and findings of the Committee of 100 and the North Dakota 2000 Committee, the activities of the Economic Development Commission, and the efforts to initiate and sustain economic development in this state by institutions of higher education to determine if there is duplication of services or areas that require additional economic development efforts and to determine which economic development efforts are succeeding and which are not succeeding; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 858

HOUSE CONCURRENT RESOLUTION NO. 3079
(Representatives Kloubec, Schneider)
(Senators Heigaard, Olson)
(Approved by the Committee on Delayed Bills)

GARRISON DIVERSION APPROPRIATION URGED

A concurrent resolution urging Congress to appropriate \$48 million for the Garrison Diversion Unit Project.

WHEREAS, 94 North Dakota cities have applied to the State Water Commission and the Garrison Diversion Conservancy District for financial assistance for water supply and distribution projects in their communities; and

WHEREAS, the Southwest Pipeline Project will require \$30 million in construction funds in order to provide water to Dickinson, and additional funds will be necessary in order to enable the project to distribute water to smaller communities and rural areas in southwestern North Dakota; and

WHEREAS, the Northwest Area Water Supply Study indicated a significant need for improved water supply, water quality, and water distribution exists in the northwest portion of the state; and

WHEREAS, several companies have considered relocating or locating their businesses in Fargo but have not done so because of the lack of a guaranteed water supply which has resulted in a limitation of new industrial economic development in Fargo; and

WHEREAS, in 1988 North Dakota experienced one of the most severe short-term droughts in the state's recorded history which had a substantial impact on the agricultural and livestock sector of the economy of North Dakota; and

WHEREAS, if the Garrison Diversion Unit Project had been complete in 1988 it would have provided 130,000 acres of irrigation and provided for the production of sufficient forage to adequately feed three-fourths of North Dakota's brood cow population for a period of 240 days; and

WHEREAS, there is a critical need for distribution of Missouri River water into the Sheyenne and Red River systems; and

WHEREAS, the tremendous recreation industry dependent on a stable water supply for Devils Lake is in continuous jeopardy both in terms of water quantity and water quality; and

WHEREAS, water development projects provide opportunities for reducing flood damage by controlling floods, provide economic development opportunities by creating new wealth, and create new programs focusing on

basic sector industries as well as other opportunities which enhance the quality of life in North Dakota; and

WHEREAS, \$48 million is required to continue construction of project features; address municipal, rural, and industrial water supply needs; satisfy recreation and wildlife requirements; and provide Indian water requirements;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Congress of the United States to appropriate \$48 million for the Garrison Diversion Unit Project for fiscal year 1990; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the presiding officers of the United States House of Representatives and the United States Senate, to the Secretary of the Interior, and to each member of the North Dakota Congressional Delegation.

Filed March 28, 1989

CHAPTER 859

HOUSE CONCURRENT RESOLUTION NO. 3080
(Representatives Sorensen, Kloubec, Schneider)
(Senators Olson, Maixner, Yockim)
(Approved by the Committee on Delayed Bills)

VIRGIL HILL DAY

A concurrent resolution designating March 4, 1989, as Virgil Hill Day and urging the Governor to issue a proclamation to the same effect.

WHEREAS, Virgil Hill represented North Dakota and the United States with honor as a participant in the 1984 Olympic Games; and

WHEREAS, Virgil Hill honored North Dakota and the United States by winning the Silver Medal at the 1984 Summer Olympic Games; and

WHEREAS, Virgil Hill is presently the undefeated World Boxing Association Light Heavyweight Champion; and

WHEREAS, North Dakota takes great pride in the amateur and professional accomplishments and exemplary behavior of Virgil Hill; and

WHEREAS, in his travel throughout the world, Virgil Hill has brought honor to the State of North Dakota and has credited his North Dakota heritage as the basis of his hard work ethic which has brought him to international prominence;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That March 4, 1989, is designated as Virgil Hill Day and that the Fifty-first Legislative Assembly urges the Governor to issue a proclamation to the same effect; and

BE IT FURTHER RESOLVED, that the Fifty-first Legislative Assembly joins the citizens of North Dakota in wishing Virgil Hill the best of luck with his title defense on March 4, 1989.

Filed March 7, 1989

CHAPTER 860

HOUSE CONCURRENT RESOLUTION NO. 3081
(Peterson, Martinson)
(Approved by the Committee on Delayed Bills)

LEGISLATIVE EMPLOYEE COMPENSATION STUDY

A concurrent resolution directing the Legislative Council to study legislative employee compensation.

WHEREAS, Legislative Assembly employees function in an extremely demanding work environment and carry out their duties with great dispatch, ability, efficiency, intelligence, and good humor; and

WHEREAS, attracting and retaining the high quality employees that the Legislative Assembly has been blessed with to the present time is critical to the continued ability of the Legislative Assembly to properly conduct its deliberations within the limited time available; and

WHEREAS, various legislative employee positions involve different degrees of ability, experience, and overtime work, which necessitate differences in compensation; and

WHEREAS, Legislative Assembly employee compensation has not been adjusted since 1985 and has been adjusted in only two of the last five legislative sessions; and

WHEREAS, assuring adequate compensation to legislative employees is of primary importance to attracting and retaining the talented and dedicated employees necessary for the Legislative Assembly to conduct its deliberations in an appropriate atmosphere;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study legislative employee compensation levels for legislative employees in general and with attention to whether variances in compensation among employees adequately address the level of experience, ability, and overtime work required of particular positions; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 31, 1989

CHAPTER 861

HOUSE CONCURRENT RESOLUTION NO. 3083
(Kloubec)
(Approved by the Committee on Delayed Bills)

STATE BUILDING INSURANCE COVERAGE STUDY

A concurrent resolution directing the Legislative Council to study the adequacy of property insurance coverage to replace state buildings.

WHEREAS, the State Fire and Tornado Fund was established in 1919 to insure various state agencies, industries, and political subdivisions against loss to buildings and contents; and

WHEREAS, the cost of interruption resulting from loss of property is not covered by the State Fire and Tornado Fund; and

WHEREAS, the cost of interruption to a state agency may be substantial because of the need to utilize temporary facilities; and

WHEREAS, the replacement of lost property with an identical structure may not be practical because of changing space and program needs; and

WHEREAS, the proceeds from insurance may not be sufficient to finance the building of a replacement facility adequate to meet the changing needs;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the adequacy of property insurance coverage to replace state buildings and determine the feasibility and desirability of providing business interruption insurance coverage to state agencies; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 31, 1989

CHAPTER 862

HOUSE CONCURRENT RESOLUTION NO. 3085

(Mertens)

(Approved by the Committee on Delayed Bills)

STATE NURSERY PRICING STUDY

A concurrent resolution directing the Legislative Council to study the price level the State Forester should establish for seeds and planting stock from the state nursery.

WHEREAS, North Dakota Century Code Section 4-19-03 prohibits the State Forester from charging a price greater than the cost to the state for production and transportation in the case of planting stock or collection and transportation in the case of seeds from the state nursery; and

WHEREAS, it may be advantageous for the State Forester to be allowed to charge more than production, collection, and transportation costs in order to accumulate reserves for use in unusual circumstances such as crop loss or special projects; and

WHEREAS, factors used to establish price levels should be based on accurate and acceptable assessment of all the pertinent costs relating to production, collection, and transportation and should be competitive with the retail market and with the prices of other states;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the price level the State Forester should establish for seeds and planting stock from the state nursery; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed April 5, 1989

CHAPTER 863

HOUSE CONCURRENT RESOLUTION NO. 3086
(Gerl, Lindgren, Dorso)
(Approved by the Committee on Delayed Bills)

CHARITABLE GAMING AND OVERVIEW STUDY

A concurrent resolution directing the Legislative Council to study charitable gaming laws and rules and the need to establish a permanent legislative overview committee for charitable gaming issues.

WHEREAS, charitable gaming problems that come to light, the growth of charitable gaming as an industry in this state, and the various forms of gaming allowed by state law require an increasing amount of attention of the Legislative Assembly; and

WHEREAS, a thorough review of rules and laws governing charitable gaming is required to assure that rules and laws regarding taxes, enforcement, and limitations on charitable gaming are adequate to govern charitable gaming under current conditions;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study charitable gaming laws and rules and the need to establish a permanent legislative overview committee for charitable gaming issues; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed April 11, 1989

CHAPTER 864

HOUSE CONCURRENT RESOLUTION NO. 3087
(Representative Kingsbury)
(Senator Streibel)
(Approved by the Committee on Delayed Bills)

COURT MONITOR CHANGES SUPPORTED

A concurrent resolution supporting the Attorney General of North Dakota in requesting the United States District Court for the District of North Dakota to modify the district court's orders to minimize or eliminate the role of the court monitor that was created by the court in the case concerning the deinstitutionalization of developmentally disabled persons.

WHEREAS, as part of its August 31, 1982, decision in the case concerning the deinstitutionalization of developmentally disabled persons in this state, the United States District Court created the position of court monitor; and

WHEREAS, in its implementation order of March 7, 1984, the district court described the duties and responsibilities of the court monitor; and

WHEREAS, the court recently considered the more specific issue of appropriate placement of class members into intermediate care facilities and skilled care facilities; and

WHEREAS, that recent order placed additional requirements with respect to class placements to nursing homes, including the implementation of an ongoing program to effectuate corrections in the areas of overuse of behavior controlling medications, adequate community support for developmentally disabled and mentally retarded persons, reduction in instances of improper placement, and provision of a permanent educational and operational program for human service personnel; and

WHEREAS, the court monitor's role in reviewing the progress toward implementation of the court's order would appear to be expanding, notwithstanding the state's continuation of good faith efforts to comply with the court-established requirements; and

WHEREAS, the Legislative Assembly has appropriated substantial funds each biennium for the payment of fees and expenses billed to the state by the court monitor; and

WHEREAS, the Legislative Assembly has appropriated increased funding for the Protection and Advocacy Project during past bienniums to provide, in part, for the monitoring of facilities for and services to developmentally disabled persons;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-first Legislative Assembly supports the Attorney General of North Dakota in the request to the United States District Court for the District of North Dakota to modify the district court's orders to minimize or eliminate the role of the court's monitor in implementing the orders of the court in the case concerning the deinstitutionalization of developmentally disabled persons; and

BE IT FURTHER RESOLVED, that the Secretary of State is directed to forward a copy of this resolution to the Attorney General of North Dakota.

Filed April 14, 1989

CHAPTER 865

HOUSE CONCURRENT RESOLUTION NO. 3088

(Representatives R. Anderson, Timm)

(Senator Langley)

(Approved by the Committee on Delayed Bills)

TRIBAL VEHICLE LICENSING STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of entering into reciprocal agreements with Indian tribes concerning the registration of motor vehicles, and the impact upon state funding provided to its political subdivisions as a result of an Indian tribe's exercise of its sovereign powers.

WHEREAS, the state of North Dakota currently registers motor vehicles for all persons within the state of North Dakota, including those persons who are members of Indian tribes residing within Indian reservations; and

WHEREAS, state officials have learned of the intention of the Devils Lake Sioux Indian tribe to begin issuing its own motor vehicle registrations to its own members as early as the spring of 1989; and

WHEREAS, current North Dakota law does not provide for the recognition of motor vehicle registrations issued by Indian reservations; and

WHEREAS, current North Dakota law does not allow for any reciprocal agreement between the state of North Dakota and an Indian reservation concerning the recognition of motor vehicle registrations of either party; and

WHEREAS, other Indian reservations within North Dakota may also desire to issue motor vehicle registrations to its own members; and

WHEREAS, members of the Fifty-first Legislative Assembly upon learning of the potential of Indian reservation motor vehicle registration have expressed concerns with respect to the ramifications of such registration especially as to its effect upon the distribution of moneys from the highway tax distribution fund, the financial impact upon those counties in which Indian reservations are located with respect to the maintenance of roads within reservation boundaries, the integration of the state and Indian tribe vehicle registration system, and fair and equitable treatment to Indian tribe members and other citizens of the state of North Dakota who seek registration of their motor vehicles; and

WHEREAS, the exercise of an Indian tribe's sovereign power may occur in subject areas other than motor vehicle registration which may adversely impact upon the amount of state funds provided to political subdivisions; and

WHEREAS, there is little time left in the remaining days of the Fifty-first Legislative Assembly, to adequately, accurately, and effectively deal with these complex and serious subjects;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of a reciprocal agreement between the state of North Dakota and Indian tribes with respect to motor vehicle registrations issued by either party; and

BE IT FURTHER RESOLVED, that all state and local law enforcement agencies be encouraged to work with Indian tribes to resolve the issue of motor vehicle registrations in anticipation of the work of the Fifty-second Legislative Assembly; and

BE IT FURTHER RESOLVED, that the Legislative Council study the impact upon state funding provided to its political subdivisions as a result of an Indian tribe's exercise of its sovereign powers; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed April 13, 1989

CHAPTER 866

HOUSE CONCURRENT RESOLUTION NO. 3089
(Representatives Oban, Wentz, Enget)
(Senators Tennefos, Krauter)
(Approved by the Committee on Delayed Bills)

DIAL-A-PORN REGULATION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of regulating dial-a-porn telephone services.

WHEREAS, vendors of sexually explicit telephone messages have become increasingly aggressive in using public communication networks and minors are particularly susceptible to such messages; and

WHEREAS, federal law prohibits the use of telephones in interstate or foreign, but not in intrastate, communication to make obscene or indecent communications for commercial purposes, although legislation was recently introduced to address intrastate communications; and

WHEREAS, this state has no statutory or regulatory provisions governing dial-a-porn telephone services or prohibiting the provision of such services to minors;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of regulating dial-a-porn telephone services, with the study to include consideration of methods to prohibit the provision of such services to minors; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed April 11, 1989

CHAPTER 867

HOUSE CONCURRENT RESOLUTION NO. 3090
(Committee on Employment)
(Approved by the Committee on Delayed Bills)

SESSION EMPLOYEE RETENTION

A concurrent resolution authorizing the retention of certain employees of the House and Senate to allow for the completion of legislative work after the close of the session.

WHEREAS, it is necessary to complete and close work of the regular session of the Fifty-first Legislative Assembly; and

WHEREAS, certain legislative employees should be retained to complete and close this work;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following named positions may be retained by the House of Representatives and the Senate after the adjournment of the regular session:

HOUSE POSITIONS

Chief Clerk
Assistant Chief Clerk
Desk Reporter
Bill Clerk
Sergeant-at-Arms
Assistant Sergeant-at-Arms
Chief Page and Bill Book Clerk
Chief Stenographer and Payroll Clerk
Bill Room Clerk
Appropriations Committee Clerk
Assistant Appropriations Committee Clerk
Secretary to Speaker
Secretary to Majority Leader
Secretary to Minority Leader
Chief Telephone Clerk

SENATE POSITIONS

Secretary of the Senate
Assistant Secretary of the Senate
Desk Reporter
Bill Clerk
Desk Page
Sergeant-at-Arms
Assistant Sergeant-at-Arms
Assistant Sergeant-at-Arms
Chief Page and Bill Book Clerk
Chief Stenographer and Payroll Clerk

Stenographer
Chief Committee Clerk
Appropriations Committee Clerk
Secretary to Majority Leader
Assistant Secretary to Majority Leader
Secretary to Minority Leader
Assistant Secretary to Minority Leader
Chief Bill and Journal Room Clerk
Bill Room Clerk

BE IT FURTHER RESOLVED, that the above-listed House and Senate employees shall serve at the request of, and under the supervision of, the Chief Clerk of the House and the Secretary of the Senate, and that all of the listed employees, including the Chief Clerk of the House and the Secretary of the Senate, may not be employed for more than 200 man-days in the aggregate. The Chief Clerk of the House and the Secretary of the Senate shall assign work among the available House and Senate employees, respectively, in the appropriate manner. The Chief Clerk of the House and the Secretary of the Senate shall coordinate the work assignments in their respective houses in such a manner that the total number of man-days utilized does not exceed the aggregate limit on man-days in this resolution. The Chief Clerk of the House and the Secretary of the Senate shall minimize the days spent in completion of legislative business to the extent consistent with that completion; and

BE IT FURTHER RESOLVED, that the employees in the above-named positions be paid their regular rates of pay as specified in Senate Concurrent Resolution No. 4027 for work pursuant to this resolution, and all of these sums are to be paid out of the appropriation to the Fifty-first and Fifty-second Legislative Assemblies, and after completion of the work, providing that each above-listed employee must be paid on a pro rata basis if the total number of man-days exceeds the aggregate limit.

Filed April 18, 1989

HOUSE MEMORIAL RESOLUTION

CHAPTER 868

HOUSE MEMORIAL RESOLUTION NO. A
(Committee on Memorial Resolutions)

DECEASED HOUSE MEMBERS MEMORIALIZED

A memorial resolution for deceased members of the House of Representatives of North Dakota.

WHEREAS, God has summoned to eternal rest our former colleagues:

RUSSELL L. BELQUIST, who served in the 36th through the 39th Legislative Assemblies, from the 32nd District, died September 22, 1988.

LEONARD A. BOPP, who served in the 36th Legislative Assembly, from the 13th District, died November 5, 1986.

GORDON V. COX, who served in the 20th through the 22nd Legislative Assemblies, from the 27th District, died October 4, 1987.

RALPH C. DOTZENROD, who served in the 42nd through the 50th Legislative Assemblies, from the 27th District, died October 13, 1988.

JOHN R. FLECK, who served in the 27th through the 32nd Legislative Assemblies, from the 27th District, died October 2, 1986.

ROBERT D. HARTL, who served in the 43rd Legislative Assembly, from the 7th District, died July 29, 1987.

RUSSELL IDSO, who served in the 35th through the 37th Legislative Assemblies, from the 11th District, died December 30, 1988.

SYBIL BAKER KELLY, who served in the 36th through the 38th Legislative Assemblies, from the 21st District, died March 1, 1988.

FRED W. KLINGER, who served in the 36th and 37th Legislative Assemblies, from the 17th District, died May 12, 1987.

HENRY P. MAUTZ, JR., who served in the 35th Legislative Assembly, from the 46th District, died March 30, 1987.

FRANKLIN PAGE, who served in the 24th through the 26th Legislative Assemblies, from the 1st District, died November 17, 1987.

OGDEN D. ROSE, who served in the 33rd and 34th Legislative Assemblies, from the 11th District, died April 17, 1988.

SIMON A. SIMONSON, who served in the 40th and 41st Legislative Assemblies, from the 23rd District, died May 6, 1987.

THOMAS L. SNORTLAND, who served in the 32nd through the 34th Legislative Assemblies, from the 16th District, died July 2, 1988.

RAYMOND G. VENDSEL, who served in the 38th Legislative Assembly, from the 29th District, died January 18, 1989.

WHEREAS, today, as members of the House of Representatives of the 51st Legislative Assembly of North Dakota, we pause to mourn the passing of our former colleagues and to honor their memories; and

WHEREAS, these legislators rendered outstanding service to the people of the state by their contributions to public service;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA:

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues, through the words of the following poem, which was the last poem written by the former Representative Ralph Dotzenrod:

Today I'll start with the rising sun
To use what God has given me
To use as I will 'til the day is done
For good or ill as my choice may be.

It's really important my choice is true
I'm trading a day of my life away
When tomorrow comes may I never rue
What I've bought with the coins of life today.

May it not be loss, but a gain I buy
May it not be evil, but good instead
May I cheer the heart of a passerby
Or brighten a life by the right word said.

Tomorrow will come, and today will fade
May I be sure when this day is past
The things I have bought with my coins in trade
Will not be regrets, but are joys that last.

BE IT FURTHER RESOLVED, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the House of Representatives and that enrolled copies of this resolution be presented by the Secretary of State to the surviving families of these deceased Representatives.

Filed March 17, 1989

SENATE RESOLUTION

CHAPTER 869

SENATE RESOLUTION NO. 1

(Heigaard)

(Approved by the Committee on Delayed Bills)

WALTER R. HJELLE RECOGNITION

A resolution recognizing Walter R. Hjelle for his many accomplishments and leadership in the transportation field and his long years of service to this state.

WHEREAS, the Legislative Assembly customarily recognizes and honors North Dakota citizens for achievements that have brought national recognition; and

WHEREAS, Walter R. Hjelle was first appointed Highway Commissioner of the North Dakota State Highway Department in 1961 and had the longest continuous service as Highway Commissioner of any individual currently serving in that capacity in the United States; and

WHEREAS, Walter R. Hjelle's dedication to professionalism and public service led to involvement in diverse state and national associations including serving as vice president of Region III of the American Association of State Highway and Transportation Officials (AASHTO), chairman of the AASHTO Subcommittee on Public Information, chairman of the AASHTO Highway Traffic Safety Committee, a participant of the AASHTO Policy Committee and Standing Committee on Administration, past president of the Mississippi Valley Conference, and as a member of the Kiwanis, the American Legion, and the Masonic and Elk Lodges; and

WHEREAS, among Walter R. Hjelle's many noteworthy accomplishments are his leadership in aiding North Dakota in completing its interstate highway system before any other state completed its system, the expansion to four lane highways of United States Highway 83 North between Bismarck and Minot and United States Highway 2 between Grand Forks and Minot, his amicable and professional relationship with four different governors from two political parties, and the long-standing positive and fruitful relationship between the State Highway Department and the Federal Highway Administration, other state agencies, and other transportation entities; and

WHEREAS, recognition for Walter R. Hjelle's many accomplishments includes the Distinguished Service Citation awarded by the Associated General Contractors, induction into the Highway Hall of Honor, the Distinguished Alumni Award from Valley City State College, the Award of Gratitude from Communities for enabling the construction of a modern United States Highway 2, the 1979 Boss of the Year Award given by the Sakakawea Chapter of Professional Secretaries International, the 1979 Meritorious Service Award given by the Red River Valley Potato Growers, honorary lifetime membership in the International 281-10 Highway Association, the merit Award for Employment of the Handicapped, the Governor's Commodore Award, a Certificate for Outstanding Achievement in the Field of Recreation and Parks, an award from

Take Pride in America, and a lifetime associate membership in the Jaycees; and

WHEREAS, Walter R. Hjelle's many noteworthy accomplishments deserve recognition in an appropriate manner to ensure that the citizens of this state are aware of his dedication to public service and the many benefits to the state that have resulted from that dedication and his commitment to providing and maintaining a viable highway system for the citizens of this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA:

That the Senate expresses its thanks and appreciation to Walter R. Hjelle and commends him for his many accomplishments and leadership in the transportation field and for his long years of service to this state and its citizens; and

BE IT FURTHER RESOLVED, that the Secretary of the Senate send an enrolled copy of this resolution to Walter R. Hjelle.

Filed April 17, 1989

SENATE CONCURRENT RESOLUTIONS

CHAPTER 870

SENATE CONCURRENT RESOLUTION NO. 4001
(Legislative Council)
(Interim Education Finance Committee)

SCHOOL DISTRICT REVENUES STUDY

A concurrent resolution directing the Legislative Council to study in lieu of property tax payments to school districts; school district revenues derived from oil, gas, and coal taxes; and other payments to school districts other than from the state to determine whether to include these funds as local resources when measuring school district contributions to the foundation program.

WHEREAS, under the property equalization component of the foundation aid formula, a 20-mill equalization factor is multiplied times the net assessed and equalized valuation of real property in each school district and the resulting amount is subtracted from the school district's foundation aid payment; and

WHEREAS, many school districts receive federal educational funds to replace taxes lost because of the presence of federal property, which is not subject to state or local taxation, in the school districts; and

WHEREAS, this gives a double benefit to such school districts because the 20-mill equalization factor is not applied to federal property, thus reducing the amount that is subtracted from the foundation aid payment; and

WHEREAS, school districts with federal property also receive federal impact aid; and

WHEREAS, federal law requires states to have a finance system designed to equalize expenditures among school districts in the state in order to deduct federal impact aid from the amount of state aid a school district receives; and

WHEREAS, some school districts derive revenues from the state impact aid program, the tax on the production of oil and gas, and the tax on coal conversion facilities to compensate such school districts for extraordinary expenditures caused by coal or oil and gas development and the growth incidental to the development; and

WHEREAS, some school districts also receive other money such as federal payments for game and fish land; and

WHEREAS, some states, in an effort to equalize their education finance formulas, deduct in lieu of property tax payments and other revenues from school districts' state aid;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study in lieu of property tax payments; school district revenues derived from oil, gas, and coal tax; and other payments to school districts other than from the state to determine whether including these funds as local resources when measuring school district contributions to the foundation aid program would result in a more equitable distribution of state aid; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 20, 1989

CHAPTER 871

SENATE CONCURRENT RESOLUTION NO. 4002
(Legislative Council)
(Interim Education Finance Committee)

FOUNDATION AID EQUALIZATION STUDY

A concurrent resolution directing the Legislative Council to study the use of various factors in addition to property wealth which could be used in the education finance formula to equalize educational opportunities for students.

WHEREAS, North Dakota has had a formalized state foundation aid program for elementary and secondary education since 1959; and

WHEREAS, property equalization is one component of the foundation aid formula; and

WHEREAS, under the property equalization component, a 20-mill "equalization factor" is multiplied times the net assessed and equalized valuation of real property in each school district and that amount is subtracted from each school district's state foundation aid payment; and

WHEREAS, the intent of this equalization factor is to make state educational funds available for redistribution to school districts that have relatively low property valuations; and

WHEREAS, the underlying assumption justifying the application of this equalization factor is that a school district with a high property valuation is in a better position to raise locally a portion of its total cost of education than is a district with a low assessed property valuation; and

WHEREAS, the use of the hypothetical 20-mill deduct as the only equalization factor may not equalize state education funding so as to meet the state constitutional guarantee to provide a free and uniform system of public school education; and

WHEREAS, some school districts with relatively low property valuations have high taxable income per capita; and

WHEREAS, other states use factors such as taxable income, assessed valuation of personal property, valuation of public utilities, motor vehicle license receipts, value of farm products, number of employed workers, and sales taxes to measure local ability to support schools; and

WHEREAS, the use of other equalization factors in the foundation aid formula may enhance equalization of educational opportunity for students in North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the use of various factors, in addition to property wealth, which could be used in the education finance formula to enhance equal educational opportunities for students and to meet the state constitutional guarantee of a free and uniform system of public school education; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 20, 1989

CHAPTER 872

SENATE CONCURRENT RESOLUTION NO. 4004
(Legislative Council)
(Interim Judicial Process Committee)

GAME AND FISH LAWS STUDY

A concurrent resolution directing the Legislative Council to study the state's game and fish laws and rules.

WHEREAS, the Legislative Council's 1971-72 interim Natural Resources Committee studied the state's game and fish laws for the purpose of revising and rearranging the laws and removing unused and archaic sections; and

WHEREAS, the Legislative Council's 1983-84 interim Judiciary "B" Committee studied the penalty provisions of the state's game and fish laws, with emphasis on the desirability of establishing noncriminal penalties for certain offenses; and

WHEREAS, the Legislative Council's 1987-88 interim Judicial Process Committee studied the state's game and fish laws and rules, with an emphasis on the laws and rules concerning the issuance of game and fish licenses and the role of county auditors in the issuance of game and fish licenses; and

WHEREAS, the scope of the 1987-88 interim study was limited to the role of county auditors in the issuance of game and fish licenses; and

WHEREAS, any legislation enacted by the 1989 Legislative Assembly relating to the bonding of county auditors and agents appointed by county auditors to issue game and fish licenses or stamps should be reviewed to determine the effectiveness of such legislation; and

WHEREAS, the state game and fish commissioner, the deputy state game and fish commissioner, bonded game wardens, county auditors, and agents appointed by county auditors are authorized to issue game and fish licenses; and

WHEREAS, public accessibility to game and fish licenses must be ensured; and

WHEREAS, all of the state's game and fish laws should be the subject of a comprehensive study for the purposes of reviewing the issuance of licenses, feasibility of a central license issuing authority, public accessibility to game and fish licenses, level and use of fees, eligibility for licenses, and any other area of concern;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the state's game and fish laws and rules; and

BE IT FURTHER RESOLVED, that in conjunction with this study the Legislative Council review the effect of any legislation enacted by the 1989 Legislative Assembly relating to the bonding of county auditors and agents appointed by county auditors to issue game and fish licenses or stamps; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 13, 1989

CHAPTER 873

SENATE CONCURRENT RESOLUTION NO. 4006
(Legislative Council)
(Interim Committee on Public Employees Retirement Programs)

RETIREE HEALTH INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study issues and the feasibility of various options relating to the provision of adequate and affordable health insurance coverage for retired members of the Teachers' Fund for Retirement and the judges' retirement program, and for other retired state employees and officials not participating in the Public Employees Retirement System or the Highway Patrolmen's Retirement System.

WHEREAS, health care spending by and for the elderly and retired population has risen faster than health care spending for any other population group in the United States, while Medicare, the primary source of health care protection for retired workers aged 65 or over, does not cover retired persons under that age, requires substantial cost sharing, and generally pays less than half of the health care expenses of the elderly; and

WHEREAS, the acceleration of health care costs in the United States during the past two decades has markedly raised health care insurance costs for the elderly and retired population, including retired public employees and officials, and has imposed a considerable financial burden on many elderly or retired persons living on fixed incomes; and

WHEREAS, the Legislative Council's Committee on Public Employees Retirement Programs has recommended a bill to the Legislative Council which would provide a mechanism for prefunding retiree health insurance benefits for retired members of the Public Employees Retirement System and the Highway Patrolmen's Retirement System; and

WHEREAS, various options may be available to provide these retired public employees and officials and their dependents with access to adequate and affordable health insurance coverage;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the issues and the feasibility of various options relating to the provision of adequate and affordable health insurance coverage for retired members of the Teachers' Fund for Retirement and the judges' retirement program, and for other retired state employees and officials not participating in the Public Employees Retirement System or the Highway Patrolmen's Retirement System; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed February 20, 1989

CHAPTER 874

SENATE CONCURRENT RESOLUTION NO. 4007 (Lips)

NAVY URGED TO HONOR GENERAL CATES

A concurrent resolution urging the Secretary of the Navy to name an appropriate United States naval vessel in honor of General Clifton B. Cates.

WHEREAS, Clifton B. Cates entered the Marine Corps in 1917 and holds the singular distinction of being the most decorated Marine Corps officer of World War I, having been awarded the Navy Cross, Distinguished Service Cross with Oak-leaf Cluster, Silver Star with Oak-leaf Cluster, and Purple Heart for his meritorious military service; and France conferred upon him the Legion of Honor and the Croix de Guerre with one gilt star and two palms; and

WHEREAS, Lieutenant Colonel Cates was chosen as commanding officer, First Marines, in May 1942, and his regiment had the distinction of winning the first major engagement on Guadalcanal, where the regiment vanquished the formidable Ichiki Detachment; and

WHEREAS, on January 1, 1948, Major General Cates was promoted to general and assumed the prestigious post of Commandant of the Marine Corps and as such played an integral role in rescuing the Corps from relegation to obscurity in postwar reorganization of the armed forces; and

WHEREAS, United States Navy policy favors the selection of heroes of the naval service when vessels are named and it would be most fitting to name an appropriate naval vessel in honor of General Clifton B. Cates, a Marine of distinction, courage, and character whose unremitting service to his country spanned three wars and five decades;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Secretary of the Navy is urged to name a guided missile destroyer, or another appropriate United States naval vessel, in honor of General Clifton B. Cates, 19th Commandant of the United States Marine Corps; and

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded by the Secretary of State to the United States Secretary of the Navy.

Filed February 22, 1989

CHAPTER 875

SENATE CONCURRENT RESOLUTION NO. 4012
(Senators Dotzenrod, Tallackson, Tennefos)
(Representatives Shide, D. Olsen, A. Olson)

CENTENNIAL YOUTH DAY

A concurrent resolution designating Saturday, May 13, 1989, as "Centennial Youth Day".

WHEREAS, North Dakota's first century saw generations of young people struggle to establish a foundation upon which present and future generations may build; and

WHEREAS, the young people of North Dakota will proudly carry North Dakota's heritage into our second century and, with perseverance and ingenuity, strive to assure that our brightest dreams for North Dakota and its citizens will be realized; and

WHEREAS, the celebration of the North Dakota Centennial presents an occasion for the state to express its pride in the fine young people of North Dakota and to recognize that contributions of young people will continue to be of fundamental importance to our great North Dakota heritage; and

WHEREAS, the Governor has issued a proclamation requesting people of the state to recognize, and express their pride in, the young people of North Dakota on the state's 100th anniversary and encouraging young people to take an active part in assuring that the quality of life in North Dakota will continue to improve in its second 100 years; and

WHEREAS, the General Federation of Women's Clubs of North Dakota, an organization that will celebrate its Centennial in 1989, has planned, in cooperation with the youth of this state, a commemorative statue of two teenage youth entitled "Pioneers of the Future" to be dedicated on the State Capitol grounds on May 13, 1989, to recognize the contributions of youth to the past, present, and future of this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That May 13, 1989, is designated as "Centennial Youth Day".

Filed February 22, 1989

CHAPTER 876

SENATE CONCURRENT RESOLUTION NO. 4014
(Senator Mathern)
(Representative Rydell)

ORGAN TRANSPLANT STUDY

A concurrent resolution directing the Legislative Council to carry out a comprehensive study, with additional public and private sector involvement, of the governmental and societal impact of the incidence and cost of organ and tissue transplants, and the appropriate statutory and regulatory policy to address those impacts.

WHEREAS, organ and tissue transplantation is increasingly viewed by the medical community, patients, and others as therapeutic and lifesaving; and

WHEREAS, no recognized treatment alternatives exist for certain end-stage organ and tissue diseases and thus a prospective transplant recipient suffering from one of these diseases will face imminent death; and

WHEREAS, organ and tissue transplantation, unlike most advanced medical technologies, is subject to a dramatic limitation which cannot be addressed by making more fiscal resources available, which is the limitation on the availability of transplantable organs and tissues; and

WHEREAS, in other cases there is a limitation of fiscal resources; and

WHEREAS, the cost of a liver transplant procedure may range as high as two hundred thirty-eight thousand dollars, and the cost of a single heart transplant may reach one hundred ten thousand dollars; and

WHEREAS, current exclusionary fiscal handling of transplantation does not reflect medical recognition of transplantation as appropriate treatment for certain end-stage organ or tissue diseases; and

WHEREAS, several state agencies and other associations are involved in either policy decisions, reimbursement, or both, with respect to organ transplants; and

WHEREAS, the Legislative Assembly ought to review all of the current statutory materials that relate to policymaking and reimbursement activities to ensure that the statutory materials are coordinated, and to satisfy themselves that the activities of the several involved executive branch agencies are coordinated to the greatest extent feasible;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council carry out a comprehensive study of the social, ethical, fiscal, medical, governmental, and other ramifications of

the types and levels of governmental involvement in organ and tissue transplant policy setting and cost reimbursement; and

BE IT FURTHER RESOLVED, that the Legislative Council in carrying out this study consult with representatives from the state department of health and consolidated laboratories, the department of human services, the workers compensation bureau, the commissioner of insurance, the Transplant Association of the Prairie, the North Dakota conference of churches, the medical community, the North Dakota Hospital and Nursing Home Association, and lay representatives; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 20, 1989

CHAPTER 877

SENATE CONCURRENT RESOLUTION NO. 4016 (Mathern, Stenehjem)

SOCIAL SERVICE PROGRAM STUDY

A concurrent resolution directing the Legislative Council to study the present trends of social service program funding and the equitable distribution of costs for such programs.

WHEREAS, social service programs are tax supported and are funded from a variety of sources; and

WHEREAS, substantial inequity currently exists in the distribution of the cost to support such programs; and

WHEREAS, the percentage of county and state budgets used to support social service programs is significant;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the present trend of social service program funding and the equitable distribution of costs for such programs; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 13, 1989

CHAPTER 878

SENATE CONCURRENT RESOLUTION NO. 4018
(Senators Krauter, Richard, Freborg)
(Representatives Martin, Mertens, Scherber)

INDIAN HEALTH CARE FUNDING URGED

A concurrent resolution urging the Congress of the United States to increase appropriations for Indian health care.

WHEREAS, Indian tribes within North Dakota rely exclusively on federal funding for health care services on Indian reservations; and

WHEREAS, federal budget reductions in the area of Indian health care have resulted in inadequate health care facilities and a reduction in the number of health care professionals on Indian reservations; and

WHEREAS, Indians have been forced to seek health care on a contract basis at inpatient and outpatient facilities located off the reservations; and

WHEREAS, the difficulties experienced by the Indian tribes in obtaining accessible health care and the health and general well-being of the Indian people are of great concern to all citizens of North Dakota, both Indians and non-Indians;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Congress of the United States to increase appropriations for Indian health care, including mental health and educational services, to assure adequate health care services to Indian tribes and to benefit the nonfederal health care providers in this state through the continued provision of contract services off the Indian reservations; and

BE IT FURTHER RESOLVED, that Indian people be consulted and involved in the process of improving Indian health care services; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States Senate, Speaker of the United States House of Representatives, and each member of the North Dakota Congressional Delegation.

Filed March 20, 1989

CHAPTER 879

SENATE CONCURRENT RESOLUTION NO. 4023
(Senators Heigaard, Olson)
(Representatives Kloubec, Schneider)

UNITED STATES MILITARY ACADEMY DAY

A concurrent resolution designating March 6, 1989, as United States Military Academy Day and inviting the West Point Glee Club to perform in Memorial Hall of the State Capitol.

WHEREAS, the United States Military Academy, located at West Point, New York, educates and trains cadets for a lifetime of service as officers of the United States Army; and

WHEREAS, the academic program of the United States Military Academy provides cadets with a broad foundation in the humanities, the social sciences, the natural and engineering sciences, and the military sciences; and

WHEREAS, the West Point Glee Club will be in Bismarck March 3-7, 1989, as part of the North Dakota Centennial celebration; and

WHEREAS, the Legislative Assembly welcomes a performance by the West Point Glee Club on Monday, March 6, 1989, in Memorial Hall of the State Capitol;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That Monday, March 6, 1989, is designated as United States Military Academy Day; and

BE IT FURTHER RESOLVED, that the West Point Glee Club is invited to perform in Memorial Hall on Monday, March 6, 1989; and

BE IT FURTHER RESOLVED, that the music director or cadet in charge be invited to address each house of the Legislative Assembly on Monday, March 6, 1989.

Filed January 24, 1989

CHAPTER 880

SENATE CONCURRENT RESOLUTION NO. 4024
(Senators Maixner, Olson)
(Representatives Kloubec, Schneider)

BURDENSOME CLEAN AIR ACT LEGISLATION OPPOSED

A concurrent resolution expressing opposition to federal acid rain legislation or amendments to the Clean Air Act that unnecessarily and unfairly burden consumers and businesses in clean, low-emission states such as North Dakota.

WHEREAS, rural electric cooperatives and utilities operating electrical generating stations in North Dakota use low-sulfur lignite coal; and

WHEREAS, rural electric cooperatives and utilities using North Dakota lignite have been leaders in pollution control efforts having spent \$700 million to install sulfur dioxide scrubbers and other pollution control equipment; and

WHEREAS, consumers of energy produced from North Dakota lignite have paid for or are paying for the cost of these pollution controls; and

WHEREAS, North Dakota has installed scrubbers to remove sulfur dioxide and other pollutants on more than 70 percent of the state's coal-fired electrical generating capacity; and

WHEREAS, scrubbers have been installed on less than 15 percent of the fossil-fueled electrical generating capacity nationally and on less than 10 percent of the fossil-fueled electrical generating capacity east of the Mississippi River; and

WHEREAS, the North Dakota State Department of Health and Consolidated Laboratories has determined that North Dakota is well within national clean air standards and was one of only three states to meet all federal air quality standards in 1985; and

WHEREAS, there is no evidence to suggest that acid rain is a problem in North Dakota; and

WHEREAS, legislation that establishes unreasonable standards to control acid rain has the potential to prohibit economic development in North Dakota and severely limit normal activity of existing businesses and industries; and

WHEREAS, the Gascoyne Mine is particularly vulnerable to reductions in emission standards because it is an export mine;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly of North Dakota opposes any legislation or amendment to the Clean Air Act which would unnecessarily and unfairly burden consumers of electricity produced from North Dakota lignite; and

BE IT FURTHER RESOLVED, that the Fifty-first Legislative Assembly of North Dakota opposes any legislation or amendment to the Clean Air Act that would unnecessarily and unfairly impact existing industry within North Dakota or adversely impact the state's future economic development; and

BE IT FURTHER RESOLVED, that the Fifty-first Legislative Assembly of North Dakota opposes any legislation or amendment to the Clean Air Act which requires further reduction of emissions from North Dakota or South Dakota generating facilities at least until such time as all other states meet standards at least equal to present emission rates in North Dakota; and

BE IT FURTHER RESOLVED, that copies of the resolution be forwarded by the Secretary of State to the Chairman of the Senate Environment and Public Works Committee and the Chairman of the House Energy and Commerce Committee and to each member of the North Dakota Congressional Delegation.

Filed March 13, 1989

CHAPTER 881

SENATE CONCURRENT RESOLUTION NO. 4025
(Senators Holmberg, Heigaard, Mushik)
(Representatives Kelly, Kretschmar)

APPORTIONMENT STUDY

A concurrent resolution directing the Legislative Council to study the state of the law with respect to legislative apportionment.

WHEREAS, legislative apportionment is a function of the Legislative Assembly; and

WHEREAS, the results of the 1990 federal decennial census will be available to the Legislative Assembly for apportionment purposes in 1991; and

WHEREAS, substantial study may be required to determine the applicable constitutional requirements for a valid legislative reapportionment plan;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the state of the law with respect to legislative apportionment, including federal and state constitutional requirements based on case law, and any state statutory apportionment requirements; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 20, 1989

CHAPTER 882

SENATE CONCURRENT RESOLUTION NO. 4026
(Senators O'Connell, Dotzenrod, Lodoen)
(Representatives Lindgren, Carlson, Haugen)

COUNTY OFFICIAL APPOINTMENT STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of appointing county officials who are elected under existing law in counties of relatively small population.

WHEREAS, small counties in North Dakota suffer serious and financially debilitating fiscal burdens that require innovative approaches to streamlining county government; and

WHEREAS, small counties in North Dakota need to find ways to eliminate unnecessary or excess cost of county government where consolidation or other forms of savings may occur; and

WHEREAS, counties with low population bases may not require the services of certain county officials elected and available on a full-time basis;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility of appointing certain officials who are elected under present law in counties with small populations; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed April 17, 1989

CHAPTER 883

SENATE CONCURRENT RESOLUTION NO. 4027 (Senator Satrom) (Representative Martinson)

LEGISLATIVE SESSION EMPLOYEE COMPENSATION

A concurrent resolution providing and designating Senate and House employees and fixing their compensation.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That for the Fifty-first Legislative Assembly the following named persons are employed and appointed as employees of the Senate and House and are to be paid the daily wages opposite their respective names in accordance with their positions as shown below:

SENATE	
Pat Conrad, Secretary of the Senate	\$85.00
Sally Paul, Desk Reporter	79.00
Doug Nordby, Sergeant-at-Arms	64.00
Perry Grotberg, Assistant Secretary of the Senate	70.00
Kathy Horsager, Bill Clerk	64.00
Roberta Nelson, Chief Stenographer and Payroll Clerk	64.00
Mary Schmitz, Chief Committee Clerk	64.00
Carin Noriega, Appropriations Committee Clerk	66.00
Cynthia Jonson, Assistant Appropriations Committee Clerk	62.00
Jean Antelman, Committee Clerk	58.00
Dolores Boutilier, Committee Clerk	58.00
Carol Hieb, Committee Clerk	58.00
Michelle Kalenze, Committee Clerk	58.00
Michelle Larson, Committee Clerk	58.00
Patricia Lemer, Committee Clerk	58.00
Jeannette Shaw-Lynch, Committee Clerk	58.00
Connie Skager, Committee Clerk	58.00
Phyllis Skager, Committee Clerk	58.00
Paulette Wilson, Committee Clerk	58.00
Tami Heid, Assistant Committee Clerk	55.00
Lucy Miller, Chief Page and Bill Book Clerk	55.00
Daniel Fitzgerald, Desk Page	48.00
Sandi Kershaw, Secretary to Majority Leader	70.00
Wanda Scheid, Assistant Secretary to Majority Leader	64.00
Jan Steinle, Secretary to Minority Leader	70.00
Craig Hagen, Assistant Secretary to Minority Leader	64.00
Loren Paul, Deputy Sergeant-at-Arms	52.00
Kevin Urness, Deputy Sergeant-at-Arms	52.00
Vernon Erickson, Assistant Sergeant-at-Arms	48.00
James Walsh, Assistant Sergeant-at-Arms	48.00
Frank Christensen, Assistant Sergeant-at-Arms	48.00
Amy Zacha, Journal Page	48.00

Mary Defender-Wilson, Information Desk Attendant	48.00
Selma Carlson, Bill Room Clerk	48.00
Patricia Hoffner, Bill Room Clerk	48.00
Reuben Schuh, Bill Room Clerk	48.00
Ledores Robey, Bill Room Clerk	48.00
Nettie Monroe, Journal Room Clerk	48.00
Diane Mittelstedt, Journal Room Clerk	48.00
Jan Sanford, Telephone Attendant	48.00
Mary Vonasek, Telephone Attendant	48.00
Ruby Stadick, Telephone Attendant	48.00
Joan Stein, Telephone Attendant	48.00
Nancy Ludwig, Telephone Page	48.00
Rolland Ketterling, Parking Lot Attendant	48.00
Jane Grant, Stenographer	52.00
Patti Haux, Stenographer	52.00
Sharon Neukircher, Stenographer	52.00
Lois J. Scherr, Stenographer	52.00
Diana Schlosser, Page	48.00
Carol Smith, Page	48.00
Verne Westervall, Page	48.00
Mae DelaBarre, Page	48.00
Ruth Faiman, Page	48.00
Jerol Johnson, Bill Book Clerk	48.00
Jeffrey Spitzer, Bill Book Clerk	48.00
Mike Black, Bill Book Clerk	48.00
Delano Huston, Chief Bill and Journal Room Clerk	58.00
Dick Lang, Janitor (partial pay only)	38.00
Luke Giesinger, Janitor (partial pay only)	51.00
Elizabeth Ternes, Janitor (partial pay only)	24.00

HOUSE

Roy Gilbreath, Chief Clerk	\$85.00
Barbara Middaugh, Desk Reporter	79.00
David Hillesland, Sergeant-at-Arms	64.00
Skip Sjothun, Assistant Chief Clerk	70.00
Jeane Marschke, Bill Clerk	64.00
Theola Stetson, Chief Stenographer and Payroll Clerk	64.00
Cindy Nelson, Appropriations Committee Clerk	66.00
Carol Nitschke, Assistant Appropriations Committee Clerk	62.00
Nancy Thompson, Assistant Appropriations Committee Clerk	62.00
Gloria Halvorson, Chief Assistant Committee Clerk	55.00
Elaine Anderson, Assistant Committee Clerk	55.00
Judy Hoffman, Committee Clerk	58.00
Constance Johnsen, Committee Clerk	58.00
Marion Kolb, Committee Clerk	58.00
Jan Mumma, Committee Clerk	58.00
Sandy Schafer, Committee Clerk	58.00
Marsha Smith, Committee Clerk	58.00
Helen Soma, Committee Clerk	58.00
Janice Stein, Committee Clerk	58.00
Jon Thomson, Committee Clerk	58.00
Joan Von Rueden, Committee Clerk	58.00
Verna Kohls, Assistant Appropriations Committee Clerk	62.00
Tove Mandigo, Chief Page and Bill Book Clerk	55.00
Karla Kramer, Desk Page	48.00
Barbara Larson, Desk Page	48.00
Brian Overton, Desk Page	48.00

Darlyne Clausnitzer, Secretary to Speaker	64.00
Mazie Patchen, Secretary to Majority Leader	70.00
Shannon Peterson, Assistant Secretary to Minority Leader	64.00
Dave Koland, Assistant Secretary to Majority Leader	64.00
Ruth Elbert, Secretary to Minority Leader	70.00
Kim Neumann, Assistant Sergeant-at-Arms	48.00
Ron Carlisle, Deputy Sergeant-at-Arms	52.00
Cliff Nygard, Assistant Sergeant-at-Arms	48.00
Dan Stuart, Assistant Sergeant-at-Arms	48.00
Mark Zimmerman, Assistant Sergeant-at-Arms	48.00
Phyllis Connolly, Assistant Sergeant-at-Arms	48.00
Todd Gierke, Assistant Sergeant-at-Arms	48.00
LeRoy Miller, Assistant Sergeant-at-Arms	48.00
Cindy Kephart, Journal Page	48.00
Margaret Puetz, Information Desk Attendant	48.00
Burnetta Barth, Bill Room Clerk	48.00
Eli Nemer, Bill Room Clerk	48.00
Dan O'Neil, Bill Room Clerk	48.00
MaryAnn Varriano, Bill Room Clerk	48.00
Bernice Asbridge, Journal Room Clerk	48.00
Hella Keller, Journal Room Clerk	48.00
Bonnie Elefson, Chief Telephone Clerk	52.00
Irma Holmstrom, Telephone Clerk	48.00
Donna Ismar, Telephone Clerk	48.00
Lois Borke, Telephone Clerk	48.00
Jane Hammel, Telephone Page	48.00
John Schmidt, Parking Lot Attendant	48.00
Verna Dixon, Stenographer	52.00
Lori Domine, Stenographer	52.00
Sandie Eckert, Stenographer	52.00
Phyllis Johnson, Stenographer	52.00
Barb Klein, Stenographer	52.00
Kay Zingg, Typist	52.00
Sharon Jensen, Typist	52.00
Richard Stenberg, Assistant Chief Page and Bill Book Clerk	52.00
Mark Brannan, Page and Bill Book Clerk	48.00
Jeff Carlson, Page and Bill Book Clerk	48.00
Jon Dockter, Page and Bill Book Clerk	48.00
JoAnn Doll, Page and Bill Book Clerk	48.00
Daniel Gannon, Page and Bill Book Clerk	48.00
Anton Gross, Page and Bill Book Clerk	48.00
Russell Hanson, Page and Bill Book Clerk	48.00
Sandi Hohbein, Page and Bill Book Clerk	48.00
Lisa Lang, Page and Bill Book Clerk	48.00
Sandi McCollum, Page and Bill Book Clerk	48.00
Carl Strum, Page and Bill Book Clerk	48.00
Cheri Thurn, Page and Bill Book Clerk	48.00
Marilyn Witterman, Page and Bill Book Clerk	48.00
Althea Yantzer, Page and Bill Book Clerk	48.00
Lloyd Billey, Page and Bill Book Clerk	48.00
Lisa Dirks, Page and Bill Book Clerk	48.00
Faye Caya, Bill Room Clerk	48.00
Joe Emineth, Janitor (partial pay only)	43.00
Gene Reynolds, Janitor (partial pay only)	51.00
Helen Just, Janitor (partial pay only)	34.00
Francis Scharosch, Janitor (partial pay only)	36.00

BE IT FURTHER RESOLVED, that it is the intent of the Legislative Assembly that if the Fifty-first Legislative Assembly provides a general salary increase for state employees, then the compensation of House and Senate employees who would not otherwise benefit from that increase will receive an additional five dollars per day, retroactive to January 1, 1989; and

BE IT FURTHER RESOLVED, that if any employee resigns, is discharged, or for other reasons terminates employment, the compensation provided for in this resolution ceases effective the last day of employment.

Filed February 14, 1989

CHAPTER 884

SENATE CONCURRENT RESOLUTION NO. 4028 (Maxson)

SALVAGE POOL STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of regulating salvage pool operations and the activities of insurance companies disposing of vehicles through such operations.

WHEREAS, insurance companies are bringing damaged vehicles into the state in increasing numbers to be sold through salvage pools; and

WHEREAS, many of these vehicles have not been retitled in the company's name nor has the company paid taxes on the vehicle; and

WHEREAS, there is considerable uncertainty regarding the extent and manner of licensing required of salvage pools that receive and accept bids on vehicles provided to the pool by insurance companies for resale; and

WHEREAS, a variety of issues exist regarding the appropriate licensing and regulation of insurance companies that dispose of vehicles through salvage pools in the state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of regulating salvage pool operations and the activities of insurance companies disposing of vehicles through such operations; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 20, 1989

CHAPTER 885

SENATE CONCURRENT RESOLUTION NO. 4029 (Krauter)

ABANDONED WATER WELL PLUGGING MEASURES URGED

A concurrent resolution urging the State Engineer to adopt measures to require the plugging of abandoned water wells.

WHEREAS, 1989 is the centennial year of the state of North Dakota; and

WHEREAS, water is one of North Dakota's most important natural resources, and the protection, development, and management of North Dakota's water resources is essential for the long-term public health, safety, general welfare, and economic security of North Dakota and its citizens; and

WHEREAS, in our centennial year we must ensure that North Dakota's water resources are preserved and protected for future generations of North Dakotans; and

WHEREAS, because abandoned water wells may cause contamination of surface and ground water supplies, the plugging of abandoned water wells is vital in preserving the quality of North Dakota's surface and ground water supplies;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the State Engineer to adopt measures to require the plugging of abandoned water wells; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Governor, the commissioners of the Public Service Commission, the members of the Industrial Commission, the State Engineer, and the State Health Officer.

Filed March 13, 1989

CHAPTER 886

SENATE CONCURRENT RESOLUTION NO. 4030
(Senators Nalewaja, Mushik, Lips)
(Representatives J. DeMers, Wentz, Smette)

CHILD CARE STUDY

A concurrent resolution directing the Legislative Council to study child care issues and needs, including the feasibility and cost of providing child care support to low income working families.

WHEREAS, recent child care forums held throughout the state identified several areas of need, including the need to provide child care support to the many low income working families that cannot afford quality child care to enable those families to remain free of the welfare system, the need for child care programs for the thousands of early elementary children that return from school to empty homes, the need for accessible and affordable child care for infants, developmentally disabled children, children of high school students, and the children of college students, the need for additional resources to provide adequate overview of child care licensing and training, and the need for resources that address startup and renovation costs and other expenses that child care facilities must incur to meet minimum state standards; and

WHEREAS, child care is important for the growth and development of North Dakota children - for their ability to participate in school and to become productive citizens; and

WHEREAS, child care is important for North Dakota families - for their present and future strength and well-being; and

WHEREAS, child care is important for jobs - for economic growth and development and for employers' ability to recruit and maintain a stable, talented work force;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study child care issues and needs, including the feasibility and cost of providing child care support to low income working families; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 29, 1989

CHAPTER 887

SENATE CONCURRENT RESOLUTION NO. 4033
(Senators O'Connell, Richard, Tennefos)
(Representatives Flaagan, Hokana, Martin)

PROPERTY TAX STUDY

A concurrent resolution directing the Legislative Council to study equalization problems in valuing property for property tax assessment, property tax exemptions and credits, and the method used to calculate county average agricultural land values for ad valorem taxation.

WHEREAS, it is a legislative responsibility to review existing laws to ensure that they address the problems they are intended to rectify; and

WHEREAS, controversy exists concerning equalization in valuing for property tax assessment the classes of property including residential, commercial, and agricultural; and

WHEREAS, controversy also exists concerning the various property tax exemptions and credits;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study equalization problems in valuing property for property tax assessment, property tax exemptions and credits, and the method used to calculate county average agricultural land values for ad valorem taxation; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendation, to the Fifty-second Legislative Assembly.

Filed April 10, 1989

CHAPTER 888

SENATE CONCURRENT RESOLUTION NO. 4034
(Senator Heigaard)
(Representative Martinson)

BUILDING AND MECHANICAL CODE STUDY

A concurrent resolution directing the Legislative Council to study the administration of building and mechanical code enforcement at the state and local level.

WHEREAS, the purpose of the State Building Code is to protect the health and safety of the people of North Dakota through adequately and safely constructed buildings throughout this state; and

WHEREAS, chapter 54-21.3 of the North Dakota Century Code provides for a minimum state building code; and

WHEREAS, chapter 54-21.3 provides for a decentralized system of building code administration and enforcement involving cities, counties, and townships; and

WHEREAS, no state level building code enforcement responsibility is statutorily assumed or provided for under chapter 54-21.3; and

WHEREAS, many rural areas have little or no access to building inspection services;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the administration of building and mechanical code enforcement at the state and local level to identify inadequacies, to determine the appropriate placement of building code responsibilities, and to recommend administrative improvements; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 20, 1989

CHAPTER 889

SENATE CONCURRENT RESOLUTION NO. 4035
(D. Meyer, Kelsh)

BANK OF NORTH DAKOTA STUDY

A concurrent resolution directing the Legislative Council to study the purposes, powers, management, and operations of the Bank of North Dakota.

WHEREAS, the Bank of North Dakota was established in 1919 for the purpose of encouraging and promoting agriculture, commerce, and industry, charging the industrial commission with the responsibility for the operation, management, and control of the Bank of North Dakota; and

WHEREAS, the powers and duties of the Bank of North Dakota as initially prescribed by statute have been expanded and extended by almost every Legislative Assembly over the past several decades; and

WHEREAS, there may have developed additional economic and financial needs of the state of North Dakota which could be addressed by the Bank of North Dakota but which are not prescribed by statute; and

WHEREAS, the Bank of North Dakota receives deposits of all state funds and deposits from other sources, which funds must be invested, loaned, or otherwise administered by the Bank of North Dakota, allowing its growth to the deposit level of almost one billion dollars; and

WHEREAS, a substantial portion of the Bank's earnings are transferred to the state treasury each biennium and appropriated by the Legislative Assembly for other uses; and

WHEREAS, the performance by the Bank of North Dakota of the duties presently prescribed by statute may require review and comment by the public;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the powers, duties, management, and operations of the Bank of North Dakota under present laws, evaluate the performance of the Bank of North Dakota, determine whether additional functions of the Bank could contribute to the economic development and general welfare of the people of this state, and determine whether retention by the Bank of a greater portion of its earnings could provide meaningful sources of funding to carry out its purposes; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 13, 1989

CHAPTER 890

SENATE CONCURRENT RESOLUTION NO. 4036 (Robinson)

PESTICIDE AND CONTAINER DISPOSAL STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of establishing an unused pesticide and pesticide container disposal program.

WHEREAS, there is substantial use of pesticides in agricultural production and for protection from insects, rodents, weeds, and other forms of life which may be pests; and

WHEREAS, improper storage and disposal of unused pesticides found on farms and in and around households may pose an environmental hazard; and

WHEREAS, the feasibility and desirability of state action regarding methods of storage and disposal of pesticides should be studied before legislative action is taken;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility of establishing an unused pesticide and pesticide container disposal program; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 13, 1989

CHAPTER 891

SENATE CONCURRENT RESOLUTION NO. 4037
(Senators Yockim, Waldera, D. Meyer)
(Representatives Nelson, Haugen, Gerhardt)

FORTUNA PORT OF ENTRY

A concurrent resolution requesting the United States Congress and the United States Customs Service to assume the responsibility for establishing and operating a twenty-four-hour port of entry at Fortuna, North Dakota.

WHEREAS, U.S. Highway No. 85 is a federal highway and the major north-south thoroughfare between the province of Saskatchewan and the states of North Dakota, South Dakota, Wyoming, Colorado, New Mexico, and Texas; and

WHEREAS, the province of Saskatchewan and the aforementioned states have established a cooperative association to promote the use of U.S. Highway No. 85 and thereby encourage economic development along this route; and

WHEREAS, U.S. Highway No. 85 is a major route for the trucking industry, and a twenty-four-hour port of entry on U.S. Highway No. 85 would increase commercial traffic and economic development in this region; and

WHEREAS, the closest twenty-four-hour port of entry is sixty miles east on U.S. Highway No. 52 or sixty miles west on Montana State Route 16; and

WHEREAS, the Fortuna port serves the major cities on either side of the Canada-United States border within this one hundred twenty mile radius; and

WHEREAS, the Congress of the United States and the Canadian Parliament recently passed the Free Trade Agreement to encourage economic development in both countries;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly requests the United States Congress and the United States Customs Service to establish and operate a twenty-four-hour port of entry on the Canadian-United States border at Fortuna, North Dakota; and

BE IT FURTHER RESOLVED, that Congress is urged to fund this project as part of a continued emphasis on economic development between Canada and the United States; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to each member of the North Dakota, South Dakota, Wyoming, Colorado, New Mexico, and Texas Congressional Delegations, the government of the province of Saskatchewan, the United States Customs Service, and the governors of the aforementioned states.

Filed March 20, 1989

CHAPTER 892

SENATE CONCURRENT RESOLUTION NO. 4038

(Senator Keller)

(Representatives O'Shea, L. Hanson, Martin)

NORTH DAKOTA SALMON DERBY

A concurrent resolution designating the Trophy Takers Salmon Club's Blackjaw Fever Salmon Derby as the official North Dakota salmon derby.

WHEREAS, North Dakota's economy benefits increasingly from tourism and recreation-generated dollars; and

WHEREAS, the Trophy Takers Salmon Club actively supports the growth and development of salmon fishing, works toward the improvement of facilities on Lake Sakakawea, and promotes the expansion of trout and salmon fishing on the Missouri River system; and

WHEREAS, the Trophy Takers Salmon Club sponsors the Blackjaw Fever Salmon Derby, which attracts contestants from 14 states and 88 North Dakota communities for nine days of salmon fishing annually beginning on the second Saturday in August; and

WHEREAS, proceeds from the Blackjaw Fever Salmon Derby have benefited federal, state, and local projects including the National Fish Hatchery salmon smolt feeding program and salmon and trout hatching; provided money for Sakakawea State Park marina lighting, ramp improvements, and memorial trees; provided money for University of North Dakota undergraduate scholarships; provided money to the North Dakota Game and Fish Department for summer employees; and provided money for area park board approved projects including ramp lights, restroom facilities, and a fish cleaning facility on Lake Sakakawea in addition to providing fishing equipment to residents of a community nursing home;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly designates the Trophy Takers Salmon Club's Blackjaw Fever Salmon Derby as the official North Dakota Salmon Derby; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Governor, the Game and Fish Commissioner, and the director of the Economic Development Commission.

Filed March 27, 1989

CHAPTER 893

SENATE CONCURRENT RESOLUTION NO. 4039 (Naaden)

NO-FAULT INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study the operation and effect of North Dakota's no-fault insurance law in comparison with no-fault insurance laws in other states.

WHEREAS, the unintended result of the operation and effect of North Dakota's no-fault insurance law has been higher motor vehicle insurance rates and greater litigation costs; and

WHEREAS, the experience in other states, such as Michigan, has been that a well-designed no-fault insurance law results, and should result, in lower motor vehicle insurance rates and lower litigation costs; and

WHEREAS, it is in the best interests of the citizens of this state to have a no-fault insurance law that provides lower motor vehicle insurance rates and less incidence of litigation;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the operation and effect of North Dakota's no-fault insurance law in comparison with no-fault insurance laws in other states to determine if this state's law should be modified or replaced to ensure lower motor vehicle insurance rates and fewer litigation costs for the citizens of this state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 20, 1989

CHAPTER 894

SENATE CONCURRENT RESOLUTION NO. 4041
(Senators Olson, Thane, Mushik)
(Representatives Kelly, J. DeMers, Haugland)

SOCIAL AND HEALTH SERVICE DELIVERY STUDY

A concurrent resolution directing the Legislative Council to study the delivery of in-home and community-based services and to explore methods by which such services can be made more affordable.

WHEREAS, although most older persons and disabled persons wish to live independently and avoid nursing home placement, they may find this increasingly difficult for a number of reasons, including poor health, loss of loved ones, and lack of affordable community support services; and

WHEREAS, the premature admission to nursing homes of frail elderly or disabled persons is precipitated by the lack of cost-effective and affordable in-home and community support services, tends to further the deterioration of the elderly or disabled person's well-being, increases the level of required care, and increases the cost to the state and the individuals involved; and

WHEREAS, there is a growing tendency on the part of state and county government to contract for services on behalf of elderly and disabled persons resulting in increased layering of administration and increased costs and overhead; and

WHEREAS, North Dakota should be commended for having developed excellent in-home and community-based services; nonetheless, the elderly and the disabled population has become increasingly mindful and concerned over the impact that a sophisticated cost-allocation process designed to maximize federal payments in Medicaid-financed programs is having on the cost of unsubsidized services paid by many elderly and disabled individuals, resulting in making the cost of these excellent services prohibitive to many private consumers; and

WHEREAS, many elderly and disabled persons prefer to purchase in-home and community-based services on a direct cost basis without bearing the overhead of government and third-party providers in the delivery of those services; and

WHEREAS, in addition to the costs of in-home and community-based services, to determine the need for and proper utilization of appropriate services, may cost the private-pay consumer up to six hundred fifty dollars annually; and

WHEREAS, many excellent public services, including social services and health services are made available to the public, without a means test and without charging the taxpaying recipients for the indirect cost of governmental delivery of those services; and

WHEREAS, the failure of the state to put in place an affordable, cost-effective, in-home and community-based service system will seriously impact the viability of these services as an alternative to costly and perhaps unnecessary nursing home care; and

WHEREAS, the lack of affordable in-home and community-based services will increase the demand for, and utilization of, long-term institutional care, thereby prematurely and unnecessarily exhausting the private resources of the elderly and disabled and in turn impacting negatively on the state budget for Medicaid-purchased nursing home services;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the current method used to reimburse in-home and community-based services, the effectiveness of the current delivery system, having government bear the indirect costs of in-home and community-based services rather than passing such costs on to the taxpaying consumer, and the feasibility of greater utilization of elderly and disabled recipients and their relatives in managing and supervising their services thereby minimizing agency administrative costs; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed April 4, 1989

CHAPTER 895

SENATE CONCURRENT RESOLUTION NO. 4042
(Senators Malewaja, Nelson, Krauter)
(Representative Martin)

WORKERS' COMPENSATION STUDY

A concurrent resolution directing the Legislative Council to study the structure, organization, and administration of the Workers Compensation Bureau and the qualifications of the Workers Compensation Bureau claims analysts and rehabilitation staff.

WHEREAS, the North Dakota workers' compensation law is designed to provide sure and certain relief to employees injured in the course of their employment; and

WHEREAS, the dramatic increase in the costs of the Workers Compensation Bureau and in the complexity of litigation involving the bureau in the last 10 years as well as the depleted nature of the workers' compensation fund may jeopardize the ability of the bureau to economically provide compensation to injured employees; and

WHEREAS, premium income has been significantly less than fund expenditures in recent years, fund equity has been greatly reduced, and there is concern about the solvency of the workers' compensation fund; and

WHEREAS, workers' compensation claims have been decided inconsistently and employees have received various modes of treatment from health care providers; and

WHEREAS, claims analysts and rehabilitation staff should be qualified and adequately trained; and

WHEREAS, to decrease work-related injuries, employees and employers should be educated concerning the services provided by the bureau; and

WHEREAS, a number of alternate plans to reorganize or restructure the bureau have been proposed; and

WHEREAS, insufficient data is available to make reasoned and informed decisions concerning major changes in the structure and organization of the bureau, claims adjudication, benefits, premiums, and other matters that may affect the solvency of the fund;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the structure, organization, and administration of the Workers Compensation Bureau and the qualification of Workers Compensation Bureau claims analysts and rehabilitation staff; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

CHAPTER 896

SENATE CONCURRENT RESOLUTION NO. 4044

(Senators Redlin, Krebsbach, Maxson, Schoenwald)
(Representatives Aas, Timm, B. Anderson, Haugland, Tollefson,
Frey, Wentz)

(Approved by the Committee on Delayed Bills)

JOB CORPS CENTER IN MINOT URGED

A concurrent resolution urging the Secretary of Labor to select North Dakota as one of the sites to open a Job Corps Center and to enter an agreement to open the center in Minot.

WHEREAS, Congress appropriated \$48 million in 1988-89 appropriations bills to undertake an effort of the Department of Labor to open six new Job Corps Centers; and

WHEREAS, the Senate Appropriations Committee specified criteria for the Department of Labor to consider in selecting sites for new Job Corps Centers including priority consideration to states currently without a Job Corps Center; preference to states where existing government facilities can be used at a nominal cost; preference to states that have demonstrated a commitment to linking a center with other federal, state, and local employment, training, and education programs; consideration to states that have shown a commitment to utilizing the Job Corps program in conjunction with other training programs to meet the needs of individuals with other barriers to employment; and priority consideration to enhancing Job Corps services for persons with disabilities; and

WHEREAS, North Dakota meets the criteria established by the Senate Appropriations Committee in all respects and is one of only six states without a Job Corps Center; and

WHEREAS, Congress has enacted Public Law 100-322, Section 423, allowing the Secretary of Labor to enter an agreement for use of a former hospital in Minot, North Dakota, as the site for a Job Corps Center; and

WHEREAS, the Minot area stands ready to welcome a new Job Corps Center;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Secretary of Labor to take necessary steps to open a Job Corps Center on the site of the former Veterans Administration Hospital in Minot, North Dakota; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the United States Secretary of Labor, the Governor, and to each member of the North Dakota Congressional Delegation.

Filed March 13, 1989

CHAPTER 897

SENATE CONCURRENT RESOLUTION NO. 4045

(Moore)

(Approved by the Committee on Delayed Bills)

LEGISLATORS' INCOME TAX CHANGES URGED

A concurrent resolution urging Congress to reverse its action whereby the Department of the Treasury was directed to issue regulations to restrict income tax deductibility of expenses of members of state legislatures.

WHEREAS, service in state legislatures, especially in states as North Dakota where legislators are part-time elected officials, is often undertaken by legislators at a personal financial sacrifice; and

WHEREAS, state legislators' "tax home" provisions of Internal Revenue Code Section 162 (h) were made substantially less advantageous and infinitely more complicated by the conference committee report on the Tax Reform Act of 1986, which directed the Department of the Treasury to issue regulations coordinating employee business expenses and travel expenses of state legislators (99th Congress, Second Session House of Representatives' Report 99-841); and

WHEREAS, the minor revenue effect of the treasury regulations is more than outweighed by the burden on state legislators and the resulting disincentive to service in state legislatures;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Congress of the United States to reverse its action whereby the Department of the Treasury was directed to issue regulations coordinating treatment of employee business expenses and travel expenses of state legislators and to return the Internal Revenue Code Section 162 (h) deduction to its status before 1987; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the Treasury, the chairman of the Senate Finance Committee, the chairman of the House Ways and Means Committee, each member of the North Dakota Congressional Delegation, the National Conference of State Legislatures, and the Council of State Governments.

Filed March 13, 1989

CHAPTER 898

SENATE CONCURRENT RESOLUTION NO. 4047
(Senators Mushik, Mathern, Thane)
(Representatives Kelly, J. DeMers, Ulmer)

HUMAN SERVICES STUDY

A concurrent resolution directing the Legislative Council to study the state's system of delivering various human services in light of recently enacted federal welfare reform legislation to determine the most efficient, effective, and responsible method of delivering public assistance to low income families and individuals, and to study the financial and other impacts on the state of implementing recently enacted federal Medicare catastrophic coverage legislation.

WHEREAS, recently enacted federal welfare reform legislation, known as the Family Support Act of 1988, is designed to restructure the basic program of public assistance for families in ways that emphasize parental responsibility through the enforcement of child support and expanded opportunities in education and training; and

WHEREAS, the Family Support Act of 1988 places additional requirements upon states to operate a Job Opportunities Basic Skills (JOBS) program for welfare recipients with children over age three, to guarantee child care to allow families to take part in the JOBS program and to ease the transition from welfare to work, to provide cash assistance and Medicaid coverage to two-parent families, and to strengthen child support enforcement through immediate wage withholding and other measures; and

WHEREAS, the state is developing a plan to implement changes in the system of delivering public assistance to North Dakota families and individuals; and

WHEREAS, the effective delivery of public assistance is an integral part of the well-being of significant numbers of North Dakota families and individuals; and

WHEREAS, the recently enacted federal Medicare Catastrophic Coverage Act of 1988, which is designed to provide catastrophic medical coverage for the elderly, the poor, and disabled, also places additional requirements upon states, including that states, under their Medicaid plans, pay Medicare premiums for certain low income persons, provide Medicaid coverage for pregnant women and infants, and provide protection for some assets of persons whose spouses are in nursing homes and covered by Medicaid; and

WHEREAS, the Medicare Catastrophic Coverage Act of 1988 significantly changes the benefit structure of the Medicare program and alters the program's financing in a manner that may place substantial cost burdens on states;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the state's system of delivering various human services in light of the federal Family Support Act of 1988 for the purpose of determining the most efficient, effective, and responsible method of integrating or coordinating educational, job training, economic development, employment, financial assistance, housing, and health care programs to low income North Dakota families and individuals, and study the financial and other impacts on the state of implementing the federal Medicare Catastrophic Coverage Act of 1988; and

BE IT FURTHER RESOLVED, that the interim committee assigned this study by the Legislative Council is encouraged to share its findings and recommendations with the Budget Section of the Legislative Council; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed April 4, 1989

CHAPTER 899

SENATE CONCURRENT RESOLUTION NO. 4048
(Senators Richard, Hanson, Heigaard)
(Representatives B. Anderson, Carlson, Nowatzki)
(Approved by the Committee on Delayed Bills)

DAYS OF PEACE AND FRIENDSHIP

A concurrent resolution designating July 2 and July 3 of each year, the period between Canada Day and United States Independence Day, as Minnesota-Manitoba-North Dakota-Saskatchewan Days of Peace and Friendship.

WHEREAS, the Congress of the United States and the Parliament of Canada have proclaimed July 2 and July 3 as the United States-Canada Days of Peace and Friendship; and

WHEREAS, that proclamation encourages people of the United States and Canada, their federal, state, provincial, and municipal governments, and their economic, educational, and cultural leaders and organizations to expand on all manners of United States-Canadian relationships, and to initiate new relationships; and

WHEREAS, the people of Minnesota, Manitoba, North Dakota, and Saskatchewan are good neighbors, enjoy a common heritage, have common goals and aspirations, and share a common destiny; and

WHEREAS, Minnesota, Manitoba, North Dakota, and Saskatchewan feature an unparalleled quality of life, a lifestyle which promotes health and fitness and the nurturing of children and families; and

WHEREAS, the people of Minnesota, Manitoba, North Dakota, and Saskatchewan share and exchange cultural events and athletic competition, as well as social relationships and commerce; and

WHEREAS, the people of Minnesota, Manitoba, North Dakota and Saskatchewan share many common border issues, and deal admirably with those issues through cooperation and friendship; and

WHEREAS, the leaders of Minnesota, Manitoba, North Dakota, and Saskatchewan will join in celebration at the border on July 2 and July 3 in association with United States-Canada Days of Peace and Friendship ceremonies; and

WHEREAS, high school and college students of Minnesota, Manitoba, North Dakota, and Saskatchewan will soon be studying together their two nations' systems of law, democracy, and government; and

WHEREAS, for the future of the United States and Canada, for our contributing to the most promising international image of cooperative

democracy in the world, and for our commitment to the heritage of our regional and continental geography and history and way of life;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That July 2 and July 3 are designated as Minnesota-Manitoba-North Dakota-Saskatchewan Days of Peace and Friendship and that the Governor is urged to issue a proclamation requesting people of the state to recognize July 2 and July 3 as a time for observing symbols of strong relationships, initiating programs, and cooperation and exchanges among cities, political leaders, economic and environmental organizations, schools, and cultural groups of all kinds to make our four state-province region an outstanding example of friendship, peace, progress, and achievement; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Governor of Minnesota, the Premier of Manitoba, the Governor of North Dakota, and the Premier of Saskatchewan.

Filed March 28, 1989

CHAPTER 900

SENATE CONCURRENT RESOLUTION NO. 4049 (Thane)

LOCAL GOVERNMENT MANDATES STUDY

A concurrent resolution directing the Legislative Council to study mandates causing increased local government expenditures or decreased local government revenues.

WHEREAS, political subdivisions are faced with the problems of increased demands for public services and declining revenues; and

WHEREAS, state government has wide latitude in determining and implementing statewide policies and programs, and in implementing policies and programs legislative mandates often cause fiscal impacts to political subdivisions in the form of increased costs or decreased revenues; and

WHEREAS, these mandated responsibilities are often unfunded or inadequately funded by state government; and

WHEREAS, funding for these mandates must be borne by an often overburdened local property tax base;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the issue of mandates on local government and recommend a process whereby the costs of state-imposed mandates are identified and funded by the state; and

BE IT FURTHER RESOLVED, that the Legislative Council include in the membership of the interim committee studying this issue one citizen member appointed by the North Dakota League of Cities and one citizen member appointed by the North Dakota Association of Counties; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 901

SENATE CONCURRENT RESOLUTION NO. 4053
(Stenehjem, J. Meyer)

LAW ENFORCEMENT TRAINING FUNDING STUDY

A concurrent resolution directing the Legislative Council to study methods for funding law enforcement training facilities and programs.

WHEREAS, adequate training facilities and programs are essential to ensuring the competence and professionalism of law enforcement officials; and

WHEREAS, current training facilities lack sufficient housing, office space, and areas for emergency vehicle and physical training and this often requires the search for and use of substitute facilities the availability of which cannot be depended upon; and

WHEREAS, the future needs for training law enforcement and correctional officers in this state will require increased funding and the methods for providing adequate funding are uncertain;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study methods for funding law enforcement training facilities and programs; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 902

SENATE CONCURRENT RESOLUTION NO. 4051
(Senators Nalewaja, Olson, Wogsland)
(Representatives Bernstein, Hoffner, Goetz)
(Approved by Committee on Delayed Bills)

HIGHER EDUCATION AWARENESS DAY

A concurrent resolution declaring Wednesday, February 15, 1989, as Higher Education Awareness Day.

WHEREAS, the state of North Dakota has a tradition of supporting its institutions of higher education and of recognizing the students who attend those institutions; and

WHEREAS, students attending at least one of the institutions of higher education are visiting the Legislative Assembly to express their concerns about the future of higher education in this state; and

WHEREAS, the Legislative Assembly acknowledges the need to preserve the quality of higher education the state has enjoyed in the past; and

WHEREAS, the Legislative Assembly acknowledges the students at the institutions of higher education who would like to express their appreciation to the members of the Legislative Assembly for their hard work and the attention they have given to the status of higher education in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly declares Wednesday, February 15, 1989, as North Dakota Higher Education Awareness Day.

Filed February 16, 1989

CHAPTER 903

SENATE CONCURRENT RESOLUTION NO. 4052 (Keller, Freborg)

AUTOMOBILE LIABILITY INSURANCE STUDY

A concurrent resolution directing the Legislative Council to study methods of ensuring that all operators of motor vehicles maintain automobile liability insurance.

WHEREAS, while all operators of motor vehicles in this state are required to have automobile liability insurance, many do not and thus inflict financial, social, and personal cost upon others when involved in automobile accidents; and

WHEREAS, the structure and methods of enforcement of the laws requiring liability insurance may be inadequate to ensure that all motor vehicle operators obtain and maintain liability insurance; and

WHEREAS, the laws of other jurisdictions should be reviewed to determine if there is a more effective method of ensuring that all motor vehicle operators maintain liability insurance;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study methods of ensuring that all operators of motor vehicles maintain automobile liability insurance; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 904

SENATE CONCURRENT RESOLUTION NO. 4053 (Heigaard, Stromme, Tennesfos)

GRADUATE RESIDENCY INCENTIVES STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of providing incentives to North Dakota graduates to remain in this state after graduation and of increasing tuition at the institutions of higher education and providing low interest loans to students to cover the cost of increased tuition.

WHEREAS, during the 1989 legislative session, the Legislative Assembly considered bills providing incentives to students to stay in North Dakota after graduation by forgiving or repaying a portion of student loans made for tuition or by forgiving or repaying a portion of the interest on student loans; and

WHEREAS, another bill considered by the Legislative Assembly would have increased tuition at the state institutions of higher education and required the Bank of North Dakota to make low interest loans available to students to pay for the increased cost of tuition; and

WHEREAS, the purpose of providing incentives to students is to encourage young, talented North Dakotans to remain in the state after graduation; and

WHEREAS, critics of such incentive proposals, however, argue that graduates leave the state because they cannot find jobs here; and

WHEREAS, if the state forgave or repaid loans or interest on behalf of students, it could be costly to the state and any forgiveness of loans to a student may be considered income to the student; and

WHEREAS, increasing tuition at the state colleges may provide additional money to meet the needs of higher education; and

WHEREAS, tuition has doubled at the North Dakota state institutions of higher education in the last decade and additional increases could prevent students from attending colleges and universities in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of providing incentives to graduates to remain in North Dakota and of increasing tuition at the state institutions of higher education and providing low interest loans to students to cover the cost of increased tuition; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 905

SENATE CONCURRENT RESOLUTION NO. 4054 (Tennefos)

PESTICIDES NEAR APIARIES STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of regulating the use of pesticides near apiaries.

WHEREAS, with 298,000 colonies of bees producing 30 million pounds of honey worth \$20 million annually, this state is a leader in honey production in the United States; and

WHEREAS, approximately 400 beekeepers do business in this state and the industry furnishes excellent honey and provides essential pollination to this state's agricultural crops; and

WHEREAS, honeybees killed when a crop is treated with pesticides result in a loss by the beekeeper and the farmer; and

WHEREAS, the interests of beekeepers to be protected against harm caused by pesticides needs to be balanced against the interests of pesticide applicators; and

WHEREAS, at least three bills relating to the use of pesticides near apiaries were introduced in the 1989 Legislative Assembly;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of regulating the use of pesticides near apiaries, including whether notice to beekeepers should be provided before use of pesticides harmful to bees and whether pesticide applicator licenses or certifications should be suspended or revoked for violations of beekeeper notice requirements; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 906

SENATE CONCURRENT RESOLUTION NO. 4055
(Senators Nalewaja, Mathern)
(Representatives J. DeMers, Bernstein)

MEDICAL AND HEALTH ISSUES STUDY

A concurrent resolution directing the Legislative Council to study the ethical, social, economic, and legal implications of various medical, bioethical, and health issues.

WHEREAS, dramatic achievements in medicine, particularly developments and advancements in the life sciences, and other circumstances have sparked a growing public awareness and interest in a number of medical, bioethical, and health issues, including the recognition of means for establishing that human death has occurred, decisions about life-sustaining treatment of patients who are dying or permanently unconscious, screening and counseling for genetic conditions and genetic experimentation, reproductive technologies, human organ transplantation, fetal research and experimentation, society's obligations to physically, developmentally, and mentally impaired individuals, equitable rural health care, problems associated with the aging population including the protection of the vulnerable elderly, and other complex and sometimes very emotional issues; and

WHEREAS, these increasingly difficult issues have been added to the traditional matters of personal conscience for physicians and other health care professionals and are faced by courts, legislators, sponsors and regulators of research, patients and their families, and others as biomedical and behavioral scientists and practitioners explore new ways to conquer illness, to sustain organ functions artificially, and to probe and even manipulate the genetic basis of life itself; and

WHEREAS, the North Dakota Legislative Assembly has struggled with many of these difficult issues in the past; and

WHEREAS, a comprehensive study may help to clarify the issues and highlight the facts that are most relevant for informed decisionmaking as well as provide a forum from which suggested improvements in public policy relating to these issues may be offered;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the ethical, social, economic, and legal implications of various medical, bioethical, and health issues, including the advisability of developing a means for establishing that human death has occurred, public policies associated with decisions about life-sustaining treatment of patients who are dying or permanently unconscious, issues relating to reproductive technologies and organ transplantation, issues relating to society's obligations to physically, developmentally, and mentally impaired individuals, equitable rural health care, problems associated with the aging population, and other medical, bioethical, and health issues; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

CHAPTER 907

SENATE CONCURRENT RESOLUTION NO. 4056 (Ingstad)

WILDLIFE RESOURCES ENHANCEMENT STUDY

A concurrent resolution directing the Legislative Council to study the state's bountiful natural resources and outdoor recreation activities with an emphasis on the state's wildlife resources and enhancement of these resources for the benefit of North Dakota citizens and economic development.

WHEREAS, the Legislative Assembly recognizes that North Dakota's bountiful natural resources and outdoor recreation opportunities act as an attraction to nonresidents who enter the state for the purposes of hunting, fishing, camping, and nature appreciation; and

WHEREAS, the Legislative Assembly recognizes that significant amounts of revenue are generated in North Dakota directly as a result of existing natural resources in the state; and

WHEREAS, the Legislative Assembly recognizes the need for management and enhancement of natural resources to assure continued enjoyment by both citizens of North Dakota and visitors to the state; and

WHEREAS, the economic well-being of the state depends upon attracting nonresidents to the state, promoting tourism, keeping the natural resources in a condition that attracts residents to stay in the state, and enhancing economic development within the state; and

WHEREAS, these resources could perhaps be more fully utilized for the purpose of hunting, fishing, camping, and nature appreciation and to promote economic development within the state if adequately managed and enhanced by the state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the state's bountiful natural resources and outdoor recreation opportunities with an emphasis on the state's wildlife resources and enhancement of these resources for the benefit of North Dakota citizens and economic development; and

BE IT FURTHER RESOLVED, that the Legislative Council seek the assistance and advice of the Attorney General, the State Game and Fish Commissioner, the director of the Economic Development Commission, federal land management agencies, and the director of the Tourism Division, in conducting this study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 908

SENATE CONCURRENT RESOLUTION NO. 4057 (Langley)

INSURANCE POLICY RATING STUDY

A concurrent resolution directing the Legislative Council to study the appropriateness of allowing the use of advisory insurance rates to be filed for insurance companies by licensed rating organizations.

WHEREAS, competition in the insurance industry is vital and held to be in the public interest; and

WHEREAS, licensed rating organizations currently collect insurance loss claims information, loss experience, expense information, and other data on behalf of participating insurance companies; and

WHEREAS, current state law permits licensed rating organizations to file advisory rates on behalf of participating insurance companies; and

WHEREAS, eighteen state attorneys general have recently joined together to sue several major insurers, reinsurers, and the Insurance Service Office, which is the largest rating organization in the United States, as defendants for allegedly engaging in illegal conduct violating antitrust laws; and

WHEREAS, current state law may encourage the inappropriate artificial fixing of insurance rates in a noncompetitive fashion;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the methods for rating insurance policies used in this state and, specifically, the appropriateness of allowing the use of advisory rates to be filed for insurance companies by licensed rating organizations; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 909

SENATE CONCURRENT RESOLUTION NO. 4058:
(Lashkowitz, Mushik, Mathern)

SOLID WASTE MANAGEMENT STUDY

A concurrent resolution directing the Legislative Council to study the problems associated with solid waste management.

WHEREAS, inefficient and improper methods of managing solid waste create serious hazards to the public health, cause pollution of air and water resources, result in scenic blights, adversely affect land values, create public nuisances, and otherwise interfere with community life and development; and

WHEREAS, it is in the public interest to encourage and promote the proper disposal of municipal and industrial waste in a manner to prevent the pollution of surface and groundwater resources and other segments of the environment; and

WHEREAS, North Dakota Century Code Chapter 23-29 and rules adopted pursuant to this chapter relate to the transportation, storage, handling, and disposal of nonhazardous solid waste; and

WHEREAS, the increasingly stringent regulatory criteria for protecting the public health and environment, the expanding liability of government and industry for past and present management of solid waste, and the escalating costs of waste management profoundly affect government and industry; and

WHEREAS, recycling may ameliorate problems associated with solid waste management and lead to better utilization of scarce nonrenewable resources; and

WHEREAS, leaking underground storage tanks have been shown to adversely impact groundwater resources and the environment in general;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the problems associated with solid waste management, including integrated waste management, use and availability of landfills; recycling methods and projects; incineration of solid waste; involvement of government in solid waste management; feasibility of pilot projects designed to promote the recycling of solid waste; and laws and rules concerning the use of underground storage tanks; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 910

SENATE CONCURRENT RESOLUTION NO. 4059
(Senators Stromme, Langley)
(Representatives Kingsbury, Nicholas, Wilkie)

MISSOURI RIVER WATER TRANSFER STUDY

A concurrent resolution directing the Legislative Council to study the feasibility of moving Missouri River water to the James, Sheyenne, Souris, and Red Rivers.

WHEREAS, low water conditions as a result of drought in the James, Sheyenne, Souris, and Red River basins may result in water quantity and quality problems in these river basins; and

WHEREAS, residents in these river basins need a reliable and stable source of water to safeguard their health and welfare as well as to promote economic development; and

WHEREAS, the Missouri River would be a good source of water to stabilize, freshen, and improve the water quality of the James, Sheyenne, Souris, and Red Rivers and would ensure a stable water supply to cities located along these rivers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility of moving Missouri River water to the James, Sheyenne, Souris, and Red Rivers; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement these recommendations, to the Fifty-second Legislative Assembly.

Filed April 10, 1989

CHAPTER 911

SENATE CONCURRENT RESOLUTION NO. 4060
(Senators Dotzenrod, Redlin)
(Representatives Flaagan, Aas)

STATE-OWNED REAL PROPERTY STUDY

A concurrent resolution directing the Legislative Council to study the methods in which the state acquires and holds real property, the effect of such acquisition on local tax bases, the feasibility of simplifying laws for acquisition and holding of real property by the state, and the feasibility of requiring divestiture of certain real property owned by the state.

WHEREAS, the state acquires real property in various ways through operation of its laws, agencies, and institutions; and

WHEREAS, property owned by the state is removed from the property tax base of local governments; and

WHEREAS, laws providing for acquisition or ownership of real property by the state are often complex and confusing, especially in regard to property obtained by the Bank of North Dakota in its various capacities; and

WHEREAS, it may be desirable to require divestiture of certain state-owned properties;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the various methods by which the state acquires and holds title to real property, the feasibility of simplifying or clarifying laws regarding acquisition and ownership of real property by the state, the effect on local tax bases of ownership of real property by the state, and the feasibility or desirability of requiring divestiture by the state of certain real property; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed March 28, 1989

CHAPTER 912

SENATE CONCURRENT RESOLUTION NO. 4061
(Senators Schoenwald, Krauter, Waldera)
(Representatives Nelson, Haugland)
(Approved by the Committee on Delayed Bills)

COAL SLURRY EMINENT DOMAIN OPPOSED

A concurrent resolution urging Congress not to approve legislation authorizing the use of eminent domain to acquire property for coal slurry pipelines.

WHEREAS, North Dakota's water is a precious natural resource that is necessary for agricultural, recreational, and industrial beneficial uses; and

WHEREAS, the Missouri River and Lake Sakakawea are seriously depleted as a result of recent drought conditions; and

WHEREAS, North Dakota water rights may be preempted by federal legislation pending before Congress which would authorize the use of North Dakota water to transport coal by slurry pipeline; and

WHEREAS, this proposed federal legislation would grant coal slurry pipeline consortiums the right of eminent domain to acquire property for the transportation of North Dakota coal and lignite, using North Dakota water, to distant utilities; and

WHEREAS, unit coal trains that currently transport vast quantities of coal in the upper midwest would be eliminated, causing the loss of North Dakota railroad jobs;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Congress of the United States not to approve legislation authorizing the use of eminent domain to acquire property for coal slurry pipelines; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the Department of Transportation, the Secretary of the Department of the Interior, the Secretary of the Department of Agriculture, the chairmen of the appropriate committees of the United States Congress, and to each member of the North Dakota Congressional Delegation.

Filed April 10, 1989

CHAPTER 913

SENATE CONCURRENT RESOLUTION NO. 4062
(Senators Tennefos, Hilken)
(Representative Timm)
(Approved by the Committee on Delayed Bills)

FEDERAL HIGHWAY TRUST FUND

A concurrent resolution urging Congress to make the federal highway trust fund permanent and to provide for use of the fund for purposes for which the fund was established.

WHEREAS, large scale rehabilitation, repair, and capacity improvements are ongoing necessities of the national highway transportation system; and

WHEREAS, the highway transportation system is the most critical component of the physical infrastructure of the United States; and

WHEREAS, there is a growing and concentrated national consensus for a program to serve the country's highway transportation needs through the year 2020; and

WHEREAS, high quality highways are critical to the ability of manufacturers to build and deliver products, and to the ability of states and communities to attract new industry and to sustain economic growth; and

WHEREAS, the international trade competitive positions of the nation and of the states are directly related to the quality of access to the interstate highway system and related to the physical condition of interstate and primary highways; and

WHEREAS, current national policy makes no provision for continuing the federal aid highway program into the future; and

WHEREAS, in all recent federal aid highway acts, Congress has had to include provisions for extending the highway trust fund and the taxes that fund it;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Congress of the United States to make permanent the highway trust fund and the user fees accruing to it, so that a reliable funding source is available for constructing, rehabilitating, and otherwise improving the highways and bridges that are so essential to the economic vigor of North Dakota and of the nation; and

BE IT FURTHER RESOLVED, that the Fifty-first Legislative Assembly urges the Congress of the United States to protect the highway trust fund from predatory proposals to divert highway user revenues to programs entirely

unrelated to the transportation purposes for which the fund was established;
and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States, the Secretary of the United States Department of Transportation, the President of the Senate and the Speaker of the House of Representatives of the United States Congress, the chairmen of the National Economic Commission, and to each member of the North Dakota Congressional Delegation.

Filed April 10, 1989

CHAPTER 914

SENATE CONCURRENT RESOLUTION NO. 4063

(Senator Tennefos)

(Representative Timm)

(Approved by the Committee on Delayed Bills)

MOTOR VEHICLE TAX REVENUE STUDY

A concurrent resolution directing the Legislative Council to study the legal status and policies for use of the receipts, disbursements, and transfers of motor vehicle license, registration, and fuels tax revenues.

WHEREAS, Article X, Section 11, of the Constitution of North Dakota provides that "revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes . . . shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways . . ." and North Dakota Century Code Section 57-43.1-29 provides that motor fuel and other motor vehicle taxes must be used for highway purposes and for no other purpose; and

WHEREAS, highway tax distribution fund receipts include motor fuels taxes, special fuels taxes, and license and registration fees as well as other transfers and taxes; and

WHEREAS, the highway tax distribution fund disbursements have included construction and maintenance of roads, planning, safety, and administration as well as transfers to other state agencies such as the Highway Patrol, State Radio, and the Economic Development Commission; and

WHEREAS, in recent Legislative Assemblies there have been transfers and proposals to divert motor vehicle license, registration, and fuels tax revenues from the highway tax distribution fund to the state general fund and to fund other programs such as the Centennial Commission, Tourism, and State Radio Communications; and

WHEREAS, legal questions exist with regard to use of motor vehicle license, registration, and fuels tax revenues under Article X, Section 11, of the Constitution of North Dakota as well as the status of all state, county, and city highway funds as dedicated funds; and

WHEREAS, litigation has challenged and may again challenge highway fund transfers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the legal status and policies for use of the receipts, disbursements, and transfers of motor vehicle license, registration, and fuels tax revenues; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

CHAPTER 915

SENATE CONCURRENT RESOLUTION NO. 4064

(Richard)

(Approved by the Committee on Delayed Bills)

DISASTER ASSISTANCE INCOME TAX TREATMENT

A concurrent resolution urging Congress and the Department of the Treasury to rescind or amend legislative and rulemaking provisions that require Disaster Assistance Act of 1988 payments to farmers to be treated as income in a single taxable year.

WHEREAS, due to the nature of farming there is a substantial fluctuation in farmers' year-to-year incomes; and

WHEREAS, farmers have adapted to fluctuating year-to-year income by methods such as storing agricultural products or entering deferred payment contracts for agricultural products and these methods are used in the normal course of their business as a means of preparing for poor crop years and income tax planning; and

WHEREAS, the drought of 1988 resulted in severe economic damage to farmers which was compensated in part by Disaster Assistance Act payments from the federal government; and

WHEREAS, Congress required, in the Technical and Miscellaneous Revenue Act of 1988 amendment of Section 451 of the Internal Revenue Code, that Disaster Assistance Act payments must be treated as income to the recipient in a single taxable year, rather than allocated among multiple taxable years, as would be the farmer's option in the normal course of business with agricultural products that were replaced by the payments; and

WHEREAS, this legislation and Internal Revenue Service rulings fail to recognize the options available to farmers in the normal course of business and require some farmers to forego ordinary income tax planning methods used in the farming business, thus extracting from farmers a portion of Disaster Assistance Act payments that were intended by the federal government to partially offset losses to American agriculture from the drought of 1988; and

WHEREAS, allowing the allocation of farmers' federal Disaster Assistance Act payments to multiple taxable years would be compatible with the intent of the federal government in providing disaster payments to farmers, would more closely parallel normal farm income circumstances, and could be done under certain reasonable limitations such as allowing payments to be spread over a limited number of years or requiring payments to be included in income in a manner that requires claiming of a minimum percentage of the income reported by the farmer in the previous taxable year;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges Congress and the Department of the Treasury to rescind or amend legislation or rules that require federal Disaster Assistance Act payments to farmers to be reported as income in a single taxable year and to provide for allocation of income from federal Disaster Assistance Act payments to multiple tax years, subject to reasonable limitations, and to allow filing of amended returns by those farmers who have already filed income tax returns for taxable year 1988; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the Treasury, the chairman of the United States Senate Finance Committee, the chairman of the United States House Ways and Means Committee, and each member of the North Dakota Congressional Delegation.

Filed April 10, 1989

CHAPTER 916

SENATE CONCURRENT RESOLUTION NO. 4065
(Satrom, Richard, Tennefos)
(Approved by the Committee on Delayed Bills)

TAX SYSTEM AND AIRPORT FUNDING STUDY

A concurrent resolution directing the Legislative Council to study the balance between the various tax systems in North Dakota, policies and issues of taxing gaming in North Dakota, and policies, planning, and funding of local and regional airports in North Dakota.

WHEREAS, uncertainty exists concerning the proper balance between the various tax systems in North Dakota, including property taxes, corporate, individual, trust, and estate income taxes, and sales, use, and excise taxes; and

WHEREAS, variation exists between statistics and studies which compare North Dakota's tax rates to the rates of other states; and

WHEREAS, sufficient data is not available to thoroughly analyze some complex tax legislation introduced in the Fifty-first Legislative Assembly including the corporate alternative minimum income tax and unitary tax; and

WHEREAS, controversy exists concerning the propriety and economic development value of the various tax credits, subsidies, and exemptions; and

WHEREAS, controversy exists concerning the appropriateness, manner, and level of taxation of gaming in North Dakota; and

WHEREAS, the funding of regional and local airports continues to be a problem requiring state involvement;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the balance between the various tax systems in North Dakota, policies and issues of taxing gaming in North Dakota, and policies, planning, and funding of local and regional airports in North Dakota; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed April 17, 1989

CHAPTER 917

SENATE CONCURRENT RESOLUTION NO. 4066
(Senators J. Meyer, D. Meyer, W. Meyer)
(Representatives Murphy, Stofferahn)
(Approved by the Committee on Delayed Bills)

GOVERNMENTAL LAND ACQUISITION STUDY

A concurrent resolution directing the Legislative Council to study the economic and social impact to North Dakota political subdivisions, agriculture, and businesses resulting from the increasing number of acres of land acquired by the federal and state governments.

WHEREAS, in North Dakota the State Game and Fish Department owns and leases approximately 151,338 acres of land and the North Dakota Parks and Recreation Department owns and leases approximately 15,598 acres of land; and

WHEREAS, in North Dakota the National Forest Service controls approximately 1,000,000 acres of land and the National Fish and Wildlife Service has over 78,000 acres of land in refuges under easement, 773,000 acres of land in wetland easements, 223,620 acres of land in fee title waterfowl production areas, and 211,000 acres of land in fee title refuges; and

WHEREAS, land under water and land acquired by the federal and state governments is removed from political subdivisions' tax bases; and

WHEREAS, there exists a growing concern over the loss of agricultural land as a result of land turned into reserves and over the competition resulting when local people and the state or federal government wishes to acquire the same land;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the economic and social impact on political subdivisions, the agricultural community, and the business community when the state or federal government acquires land and the land is removed from the political subdivisions' tax bases; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed April 10, 1989

CHAPTER 918

SENATE CONCURRENT RESOLUTION NO. 4067

(Richard)

(Approved by the Committee on Delayed Bills)

TRIBAL COURT COMMITMENTS STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of authorizing tribal courts to order involuntary commitments to state-operated facilities in accordance with the state's mental health commitment laws.

WHEREAS, tribal courts do not have the authority to order involuntary mental health commitments under North Dakota Century Code Chapter 25-03.1; and

WHEREAS, because the tribal consent necessary for state court jurisdiction has not been granted, there is no available legal process for the involuntary commitment of enrolled tribal members in need of treatment for mental illness or chemical dependency residing on the Fort Berthold, Fort Totten, Standing Rock, and Turtle Mountain reservations; and

WHEREAS, thorough study of the feasibility and desirability of authorizing tribal courts to order involuntary commitments to state-operated facilities is necessary before such authority is enacted;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of authorizing tribal courts to order involuntary commitments to state-operated facilities in accordance with the state's mental health commitment laws; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed April 10, 1989

CHAPTER 919

SENATE CONCURRENT RESOLUTION NO. 4068
(Senators Mushik, W. Meyer, Lips)
(Representatives Ulmer, Gerl)
(Approved by the Committee on Delayed Bills)

MISSOURI RIVER BANK FUNDS URGED

A concurrent resolution requesting the United States Congress to provide funds to construct bank protective works on the Missouri River downstream from the Garrison Dam and other Pick-Sloan dams.

WHEREAS, in 1988 Congress and the President approved legislation directing the United States Army Corps of Engineers to construct bank protection works on the Missouri River downstream from the Garrison Dam and other Pick-Sloan dams; and

WHEREAS, this legislation finally recognized the continual bank erosion and net loss of valuable land occurring and recognized that this loss is a Pick-Sloan Project responsibility; and

WHEREAS, land loss is continuing and is especially severe during high winter water release rates and during high summer flood release rates; and

WHEREAS, it is urgent to install protective works as soon as possible on the river banks in the most vulnerable locations to prevent more loss of valuable land; and

WHEREAS, this bank protection project must be considered a necessary correction of problems caused by the installation and operation of the Pick-Sloan dams and not as a water development project;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the United States Congress and the President are commended for passing legislation that finally addresses the Missouri River bank erosion problem and the net loss of valuable land downstream from the Pick-Sloan dams; and

BE IT FURTHER RESOLVED, that the Fifty-first Legislative Assembly urges the United States Congress to provide up to \$3,000,000 per year as provided in the approved legislation so bank protective works can be installed on a timely basis to prevent more loss of valuable land; and

BE IT FURTHER RESOLVED, that funding for this project should not be a normal federal water project appropriation, but instead should be charged to the maintenance budget of the Pick-Sloan project; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the members of the Congressional Delegations of North Dakota, South Dakota, Nebraska, and Montana; the Commanding General of the United States Corps of Engineers; the Commander of the Omaha Division of the United States Corps of Engineers; the North Dakota State Water Commission; and the Office of Management and Budget.

Filed April 10, 1989

CHAPTER 920

SENATE CONCURRENT RESOLUTION NO. 4069
(Thane, Stromme)
(Approved by the Committee on Delayed Bills)

STATE EMPLOYEE COMPENSATION STUDY

A concurrent resolution directing the Legislative Council to study state employee compensation levels and practices.

WHEREAS, some state employees may be receiving salaries resulting in family incomes below the poverty level; and

WHEREAS, state employee compensation should be based on equitable factors; and

WHEREAS, low salary jobs should be reviewed, and employees receiving low salaries should be given the opportunity to advance through job training or education to higher pay grades; and

WHEREAS, across-the-board percentage increases tend to continue disparities in compensation levels;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the current administration of salary increases, the numbers of persons in various pay grades, the nature of job duties and responsibilities in the lower pay grades, and make recommendations for options to improve compensation levels for lower paid state employees; and

BE IT FURTHER RESOLVED, that the Central Personnel Division provide such assistance to the Legislative Council as the Legislative Council requests in conducting the study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings, together with any legislation required to implement the recommendations, to the Fifty-second Legislative Assembly.

Filed April 10, 1989

CHAPTER 921

SENATE CONCURRENT RESOLUTION NO. 407C
(Senators Tennefos, Hilken)
(Representatives Timm, Dorso)
(Approved by the Committee on Delayed Bills)

HIGHWAY AND AIRPORT TRUST FUND APPORTIONMENT URGED

A concurrent resolution urging the Congress of the United States to remove the highway trust fund and the airport and airway trust fund from the unified federal budget process and enact legislation to apportion to the states over a five-year period the surpluses currently retained in the trust funds and to repeal the "trigger tax" affecting the airport and airway trust fund before the January 1, 1991, effective date of that tax.

WHEREAS, the highway and airport trust funds are funded by user fees collected in advance of expenditure and are dedicated to highway and airport improvement programs; and

WHEREAS, at the national level, the highway trust fund can support an annual spending level of approximately \$14 billion and the airport and airway trust fund can support an annual spending level of approximately \$4 billion; and

WHEREAS, inclusion in the unified federal budget has limited appropriations from the highway trust fund to approximately \$13 billion a year and appropriations from the airport and airway trust fund to approximately \$3 billion a year; and

WHEREAS, the inclusion of appropriations from the highway and airport trust funds in the unified federal budget prevents North Dakota from receiving approximately \$6 million each year in highway funds and approximately \$2.5 million each year in airport funds to which the state is entitled; and

WHEREAS, reduced appropriations from the funds has resulted in surpluses being retained in the funds of approximately \$9 billion for the highway trust fund and approximately \$6 billion for the airport and airway trust fund; and

WHEREAS, if the surpluses retained in the trust funds were apportioned to the states, North Dakota would be entitled to receive approximately \$35 million in highway funds and approximately \$15 million in airport funds; and

WHEREAS, reductions in highway and airport transportation trust fund appropriations and retention of surpluses in the funds hamper North Dakota's, as well as other states', ability to address identified, critical transportation needs; and

WHEREAS, the moneys in the highway and airport trust funds cannot be transferred to other programs included in the unified federal budget and limitations on trust fund expenditures and retention of surpluses in the trust funds may reduce the total federal budget but do not result in a real reduction in the federal deficit; and

WHEREAS, it is inappropriate that the dedicated trust funds for highways and airports are subject to the unified federal budget process; and

WHEREAS, the 50 percent reduction in taxing authority of the "trigger tax" affecting the airport and airway trust fund would adversely affect the modernization and improvement of the total airway and airport infrastructure of the national air transportation system;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Congress of the United States to remove the highway trust fund and the airport and airway trust fund from the unified federal budget process and to enact legislation to apportion to the states over a five-year period the surpluses currently retained in the trust funds and to repeal the "trigger tax" affecting the airport and airway trust fund before the January 1, 1991, effective date of that tax; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the United States Department of Transportation, the chairmen of the United State Senate and House Committees on Appropriations, and to each member of the North Dakota Congressional Delegation.

Filed April 17, 1989

CHAPTER 922

SENATE CONCURRENT RESOLUTION NO. 4071
(Senators Satrom, D. Meyer, Kinnoin)
(Representatives Murphy, Enget)
(Approved by the Committee on Delayed Bills)

FOUR BEARS BRIDGE FUNDING URGED

A concurrent resolution urging Congress to provide funds to replace the Four Bears Bridge west of New Town, North Dakota.

WHEREAS, the Four Bears Bridge, named in honor of Chief Four Bears of the Hidatsa tribe, provides an important transportation link across Lake Sakakawea; and

WHEREAS, the Four Bears Bridge, at 4,483 feet in length, is the state's longest highway bridge and earned a place in North Dakota history when it became the only three truss span highway bridge of its size to be moved over 50 miles; and

WHEREAS, the Four Bears Bridge was constructed by combining the Elbowoods, North Dakota, town bridge, which was constructed in 1930, with additional girder and deck spans to enable the bridge to extend across Lake Sakakawea; and

WHEREAS, in 1987 the bridge had traffic of approximately 2,400 vehicles per day and traffic is expected to increase to approximately 4,000 per day by the year 2007; and

WHEREAS, the bridge's narrow width, which is 20 feet from curb to curb, restricted load limit, and low vertical clearance have rendered the bridge functionally obsolete and its advancing age contributes to structural deficiencies; and

WHEREAS, to ensure the continued existence of this important transportation link, the Four Bears Bridge should be replaced and any replacement bridge should bear a plaque observing the historical significance of the Four Bears Bridge and its name;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Congress of the United States to provide funds to replace the Four Bears Bridge west of New Town, North Dakota; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the Secretary of the Department of Transportation, the Army Corps of Engineers, the majority leaders in the United States Senate and House of Representatives, and each member of the North Dakota Congressional Delegation.

Filed April 17, 1989

CHAPTER 923

SENATE CONCURRENT RESOLUTION NO. 4072

(Lips)

(Approved by the Committee on Delayed Bills)

NORWEGIAN CONSTITUTION ANNIVERSARY

A concurrent resolution congratulating the people of Norway on the 175th Anniversary of the Constitution of Norway.

WHEREAS, Syttende Mai, May 17, is Norwegian Independence Day; and

WHEREAS, on May 17, 1989, Norway will celebrate the 175th Anniversary of its Constitution, and on November 2, 1989, the state of North Dakota will celebrate the 100th Anniversary of its admission as the 39th state of the United States of America; and

WHEREAS, relations between Norway and the United States are based on a solid foundation of extensive family ties, many common interests, and a strong dedication to common values, including open and democratic government, respect for human rights, independence and self-determination, and a dedication to peace among all nations of the world; and

WHEREAS, special ties exist between North Dakota and Norway because thousands of Norwegian immigrants were important in the development of North Dakota, including Nelson E. Nelson who came to America from Norway in 1849 and in 1869 established the first homestead on land that in 1889 became part of the state of North Dakota, and because approximately one-third of North Dakota's present population has a Norwegian ethnic background;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly extends its congratulations to the people of Norway on the 175th Anniversary of the Constitution of Norway and requests the Governor to transmit to Norwegian Ambassador Kjell Eliassen and Consul General Bjarne Grindem a message congratulating the people of Norway on May 17, 1989, the 175th Anniversary of the Constitution of Norway; and

BE IT FURTHER RESOLVED, that the Fifty-first Legislative Assembly urges the Governor to extend to Ambassador Kjell Eliassen and Consul General Bjarne Grindem an invitation to the people of Norway to participate in events celebrating the 100th Anniversary of North Dakota's statehood; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor for transmittal to Ambassador Kjell Eliassen and Consul General Bjarne Grindem.

Filed April 10, 1989

CHAPTER 924

SENATE CONCURRENT RESOLUTION NO. 4073
(Thane, Mushik, Yockim)
(Approved by the Committee on Delayed Bills)

SPED AND LONG-TERM CARE PROGRAM STUDY

A concurrent resolution directing the Legislative Council to monitor the Department of Human Services' service payments to the elderly and disabled and long-term care programs during the 1989-91 biennium.

WHEREAS, the Legislative Assembly has created within the Department of Human Services a service program for the elderly and disabled (SPED) to assist persons to stay in their own homes and avoid or delay admittance to long-term care facilities at a cost in excess of \$5,600,000 for the 1989-91 biennium; and

WHEREAS, the 1989 Legislative Assembly may appropriate in excess of \$132,000,000 for long-term care during the 1989-91 biennium; and

WHEREAS, the Department of Human Services will begin the case mix-rate equalization reimbursement program for long-term care beginning on January 1, 1990; and

WHEREAS, problems may arise in the implementation of the new reimbursement program which should be brought to the attention of the next Legislative Assembly; and

WHEREAS, if the SPED program is successful, it should reduce payments to long-term care facilities; and

WHEREAS, long-term care facility personnel may be able to provide assistance as providers of services in the operation of the SPED program;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council monitor the Department of Human Services' long-term care and SPED programs during the 1989-91 interim; and

BE IT FURTHER RESOLVED, that the Legislative Council determine whether long-term care facility personnel could assist in the delivery of SPED program services; and

BE IT FURTHER RESOLVED, that the Department of Human Services provide such assistance to the Legislative Council, or its designated committee, as the Legislative Council may request in conducting the study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement those recommendations, to the Fifty-second Legislative Assembly.

Filed April 17, 1989

CHAPTER 925

SENATE CONCURRENT RESOLUTION NO. 4074
(Senators Schoenwald, Keller, Shea)
(Representatives Frey, Oban)
(Approved by the Committee on Delayed Bills)

JOHN L. LEWIS STAMP URGED

A concurrent resolution urging the Postmaster General of the United States Postal Service to issue a stamp commemorating the late John L. Lewis.

WHEREAS, John L. Lewis was a giant of the American labor movement whose leadership of the United Mine Workers of America and the Congress of the Industrial Organizations resulted in his greatest achievements; and

WHEREAS, while president of the United Mine Workers of America, the leadership and negotiating skill of John L. Lewis won a number of crucial gains for coal miners in North Dakota and across the country; and

WHEREAS, those gains included the establishment of a health care and retirement plan, improved mine safety, better wages, the establishment of a minimum age for working in coal mines, abolition of the payment to miners in company scrip, and abolition of compulsory company housing and company stores; and

WHEREAS, John L. Lewis was a chief founder of the Congress of Industrial Organizations and served as its first president from 1935 to 1940; and

WHEREAS, under leadership of John L. Lewis the Congress of Industrial Organizations organized millions of workers in the steel, auto, rubber, textile, and shipbuilding industries; and

WHEREAS, President Lyndon B. Johnson awarded the Medal of Freedom, our nation's highest civilian decoration, to John L. Lewis for his efforts on behalf of American workers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly urges the Postmaster General of the United States Postal Service to issue a stamp commemorating the late John L. Lewis; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Postmaster General of the United States Postal Service; the Citizen Stamp Advisory Committee, United States Postal Service, 475 L'enfant Plaza Southwest, Washington, D.C. 20005; and to the editors of United Mine Workers Journal, 900 Fifteenth Street Northwest, Washington, D.C. 20005.

Filed April 19, 1989

CHAPTER 926

SENATE CONCURRENT RESOLUTION NO. 4075

(Senators Olson, Heigaard)

(Representatives Kloubec, Schneider)

PRESIDENT BUSH THANKED

A concurrent resolution thanking President Bush for participating in the celebration of North Dakota's Centennial.

WHEREAS, North Dakota is celebrating 100 years of statehood in 1989; and

WHEREAS, citizens of North Dakota are celebrating the state's Centennial by participating in the North Dakota Centennial One Hundred Million Tree Program; and

WHEREAS, President Bush has expressed his support for measures protecting and enhancing the environment; and

WHEREAS, President Bush will be visiting North Dakota to recognize North Dakota's Centennial and to participate in the North Dakota Centennial One Hundred Million Tree Program by planting a tree on the State Capitol grounds; and

WHEREAS, President Bush will be the eleventh president to visit North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-first Legislative Assembly thanks President George Bush for participating in the celebration of North Dakota's Centennial; and

BE IT FURTHER RESOLVED, that the Secretary of State provide an enrolled copy of this resolution to the North Dakota Centennial Commission for presentation to President George Bush upon his arrival in North Dakota.

Filed April 24, 1989

SENATE MEMORIAL RESOLUTION

CHAPTER 927

SENATE MEMORIAL RESOLUTION NO. 1
(Committee on Memorial Resolutions)

DECEASED SENATE MEMBERS MEMORIALIZED

A memorial resolution for deceased members of the Senate of North Dakota.

WHEREAS, God has summoned to eternal rest our former colleagues:

ROBERT CHESROWN, who served in the 38th through the 42nd Legislative Assemblies, from the 31st District, died March 22, 1988.

RICHARD E. FORKNER, who served in the 38th through the 42nd Legislative Assemblies, from the 10th District, died December 27, 1988.

LESTER LAUTENSCHLAGER, who served in the 36th and 37th Legislative Assemblies, from the 2nd District, died February 1, 1988.

FRANKLIN PAGE, who served in the 27th through the 34th Legislative Assemblies, from the 1st District, died November 17, 1987.

GRANT TRENBEATH, who served in the 35th through the 41st Legislative Assemblies, from the 11th District, died January 27, 1989.

RAYMOND G. VENDSEL, who served in the 35th and 36th Legislative Assemblies, from the 43rd District, died January 18, 1989.

WHEREAS, today, as members of the Senate of the 51st Legislative Assembly of North Dakota, we pause to mourn the passing of our former colleagues and to honor their memories; and

WHEREAS, these legislators rendered outstanding service to the people of the state by their contributions to public service;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA:

That we express our sorrow on their passing and our appreciation, on behalf of the people of North Dakota, of the loyal and devoted service of our former colleagues; and

BE IT FURTHER RESOLVED, that for the perpetuation of their memory this token of respect and sympathy by their successors in trust be printed in the Journal of the Senate and that enrolled copies of this resolution be presented by the Secretary of State to the surviving families of these deceased Senators.

Filed March 20, 1989